Registered No. M. 1178.

The Mysore Gazette

PUBLISHED BY AUTHORITY

(EXTRAORDINARY)

BANGALORE, FRIDAY, MARCH 13, 1953

NOTIFICATION.

No. E.B. 19659—Elu. 91-52-1, dated Bangalore, 13th March 1953.

In pursuance of the provisions of Section 67 of the Representation of the People Act, 1951 (Central Act XLIII of 1951), the following declaration containing the name of the candidate elected in the Nagamangala Constituency of the State Legislative Assembly is published for general information :—

In pursuance of Section 66 of the Representation of the People Act, 1951, I declare that Sri K. Singari Gowda, Lawyer, Mandya, has been duly elected by the Nagamangala Constituency to fill the vacancy in the Legislative Assembly caused by the death of Sri M. Shankaralinge Gowda.

NAGAMANGALA,
Dated 9th March 1953.

T. SIDDALINGADEVARU,
Returning Officer.

By Order and in the name of the Rajpramukh,

M. K. VARADARAJAN,
Joint Secretary to Government,
Election Department.

Printed by the Director of Printing, Stationery and Publications at the Government Press, Bangalore.

Reg. No. M. 1175

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The Mysore Gazette

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(EXTRAORDINARY)

BANGALORE, FRIDAY, MARCH 6, 1953.

ELECTION COMMISSION, INDIA.

NOTIFICATION.

No. 19-136—52—Elec. III, New Delhi
February 19, 1953.

Whereas the election of Shri T. Nagappa of Tarikere (Mysore) as a member of the Legislative Assembly of Mysore from the Tarikere Constituency of that Assembly has been called in question by an election petition (Election Petition No. 136 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri T. C. Basappa of Tarikere (Mysore);

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said election petition to the Election Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

P. S. SUBRAMANIAN,
Officer on Special Duty.

BEFORE THE ELECTION TRIBUNAL, SHIMOGA.

Dated, the 15th day of January 1953.

BEFORE.

SRI B. R. RAMALINGIAH, M.A., B.L., *Chairman.*

and

SRI C. V. CHANNAPPA, B.A., B.L., *Judicial-Member.*

and

SRI MIR IQBAL HUSSAIN, B.A., B.L., *Advocate-Member.*

Shimoga Election Case No. 1—52-53.

SRI T. C. BASAPPA .... *Petitioner.*

vs

SRI T. NAGAPPA .... *1st Respondent.*

SRI T. V. NARASINGAPPA AND OTHERS *3rd Respondent.*

Petitioner was represented by Sri S. K. Venkataranga Iyengar and Sri H. Lingappa, Advocates.

1st Respondent was represented by Sri K. Pattabhiraman and Sri K. Seetharama Sastry, Advocates.

3rd Respondent was represented by Sri M. Govinda Rao, Pleader.

BEFORE THE ELECTION TRIBUNAL, SHIMOGA.

Dated, the 15th day of January 1953.

PRESENT.

SRI B. R. RAMALINGIAH, M.A., B.L., *Chairman.*

and

SRI C. V. CHANNAPPA, B.A., B.L., *Member.*

and

SRI MIR IQBAL HUSSAIN, B.A., B.L., *Member.*

Shimoga Election Case 1—52-53.

PETITIONER.—Sri T. C. Basappa, B.A., son of Chandappa, Timber Merchant, Tarikere.

Vs.

RESPONDENTS.—1. Sri T. Nagappa, son of M. Thimmiah, Timber Merchant and Landlord, Tarikere.

2. Sri Chandrasekharappa, Advocate, Tarikere.
3. Sri T. V. Narasingappa, son of Venkatarayappa, Landlord, Tarikere.
4. Sri Nadig Phaniappa, Landlord, Maruthi Street, Tarikere.
5. Sri B. Maheswarappa, son of Nagappa, Chairman, Taluk Development Committee, and Landlord, Anuvanahalli, Shivane Hobli, Tarikere Taluk.
6. Sri H. M. Lingamariappa, Landlord, Hunusaghatta, Amruthapur Hobli, Tarikere Taluk.
7. Sri D. H. Haralappa, son of Haralappa, Landlord and President, Town Municipal Council, Tarikere.
8. Sri T. H. Thimmiah, Landlord, son of Hanumanthiah, Tarikere.
9. Sri G. H. Hanumiah, son of Hanumiah, Landlord, Tarikere.

1. The Election Commission, New Delhi, on receipt from the petitioner or his election petition under Sections 80, 81 and 83 of the Representation of Peoples Act, 1951, by registered post on 14th April 1952, registered it as Election Petition No. 136 of 52 on that date and thereafter constituted this tribunal, under section 86 of the Act for its trial at Shimoga and forwarded the said election petition with the connected records to it for trial according to law.

2. This tribunal thereafter got the election petition and its annexed list of particulars published in the Official Gazette of the State on 25th September 1952 as per Section 90 of the Act. It also got a copy of the election petition and the list of particulars served on the Respondents 1 to 9 and posted the election petition for settlement of issues to 10th October 1952.

3. The election petition and the recriminatory petition under sections 97, 81 and 83 of the said Act, which the 1st respondent had filed in the office of this tribunal at Shimoga on 8th October 1952, came up before this tribunal on 10th October 1952 for hearing and the respondents 1 and 3 appeared on that date personally and by counsel, and the 4th respondent appeared in person, before this tribunal. The other respondents were absent, and, hence, the case was proceeded with as against them *ex-parte*. The case came up for filing objections to the election petition and the recriminatory petition on 25th October 1952. On that date the petitioner filed an application under Order VI Rule 17, Code of Civil Procedure, for the amendment of the election petition. That petition was allowed after hearing the objections of the respondents 1 and 3 to it, and the election petition was accordingly amended. As per the original election petition, the petitioner sought for a declaration

that the election of the 1st respondent is void and that he himself has been duly elected. As per the amended election petition, he seeks now for a declaration that the election which was held on 4th January 1952 is wholly void, or, in the alternative, if the tribunal should hold that it is not wholly void, for a declaration that the election of the 1st respondent is void, and that he himself has been duly elected. On 25th October 1952 the respondents 1 and 3 filed their objections to the election petition. The petitioner filed his objections to the recriminatory petition on the same day. The 4th respondent was absent on that date, and hence the proceedings as against him continued ex-parte. On 26th October 1952 the respondents 1 and 3 filed their objections to the amended election petition.

4. On the basis of the pleadings in respect of the election petition and the recriminatory petition, the following issues were settled :

(1) Has there been infringement of the rules relating to the time of commencement of poll by reason of the fact that polling at Booth No. 1 for Ajjampur fixed at Ajjampur to take place at 8 A.M. did not really commence until about half an hour later as alleged in para 4 of the petition ?

(2) Has there been a violation of the fundamental requirements of the Election Law by reason of the fact that the seals put on the election boxes were not in tact as alleged in para 5 of the petition ?

(3) Has the election been vitiated by the material irregularity that in some polling booths, in particular in pooling booth No. 6 of Tarikere Kasaba and also in polling booth No. 18 Koratagere the number of votes actually polled were found to be in excess of the number of ballot papers issued ?

(4) Were several votes counted as valid in favour of the 1st respondent really ought not to have been so counted as either some of them were impersonated votes or votes not of those of the actual voters found on the list as in some cases the voters in the list were dead and in some other cases the voters did not turn up as alleged in para 7 ?

(5) Did the 1st respondent hire and procure a motor bus which was a service bus running between Tarikere and Hiriyur, belonging to one Ahmed Jan, as alleged in para 1 of the list of particulars and thereby commit the corrupt practice referred to in it ?

(6) Did the 1st respondent take the assistance of a number of Government servants to further the prospects of his election as alleged in para 2 of the list of particulars ?

(7) Did the 1st respondent, through his agents, influence several voters to vote for himself by making frantic appeals using the name of Manjiah Heggade of Dharmasthala and exploiting the feelings of reverence of several Hindu votaries of the said gentleman and the seat of worship to which he belonged as per particulars set out in para 3 of the list of particulars ?

(8) Did the 1st respondent feed several voters and extract promises from them in token of gratitude that they would vote for him as per particulars set out in para 4 of the list of particulars and thereby commit an illegal practice which has materially affected the result of the election ?

(9) Did the 1st respondent by himself and through his agents systematically disturb the election meetings in particular the meeting arranged at Ajjampur as per particulars set out in para 5 of the list of particulars ?

(10) Did the 1st respondent by himself and through his agents intimidate the petitioner's workers by threat of violence as per particulars stated in para 6 of the list of particulars ?

(11) Is the return of election expenses lodged by the 1st respondent false in material particulars and has the 1st respondent omitted to include in the return of election expenses, expenses incurred by him in connection with the election which would easily exceed the sanctioned limit of Rs. 5,000 as per particulars stated in para 7 of the list of particulars ?

(12) Has the election of the 1st respondent been procured and induced by the said corrupt practices with the result that the election has been materially affected ?

(13) Was the counting of votes done in such a manner that it was impossible either for the petitioner or his agents to know and note the particulars of improperly accepted votes for the 1st respondent ?

(14) Would the petitioner have obtained a majority of votes had it not been for the aforesaid corrupt and illegal practices on the part of the first respondent ?

(15) Is the election petition not competent and is it barred by time as pleaded by the respondents 1 and 3 ?

(16) Is the election petition not duly presented and has it offended section 117 of the Representation of the People Act ?

(17) Has the petitioner no right or competence to figure as a petitioner for the reasons stated in para 2 (*c*) of the objections of the 1st respondent to the election petition, and has he not acquired right to present the petition under section 84 of the Representation of People Act ?

(18) Are the reliefs claimed by the petitioner not proper and legal ?

(19) Did the petitioner hire and procure motor vehicles which could not be so hired and procured and use them for conveying his voters other than the members of his family or his agents to the polling booths on the date of poll as per particulars set out in para 1 (*a*) and 1 (*b*) of the list of particulars annexed to the recriminatory petition of the 1st respondent ?

(20) Did the petitioner by himself and through his agents threaten the voters in an area with personal injury in order to interfere with the free exercise of electoral right as per particulars

of undue influence set out in para 2 of the list of particulars annexed to the recriminatory petition of the 1st respondent ?

(21) Did the petitioner both personally and by his agents arrange for the congregation of voters in that constituency and propagate such ideas as to induce the belief in the voters that they would be rendered objects of divine displeasure should they act contrary to the interests of the petitioner and his party as per particulars set out in paras 3 and 6 of the list of particulars annexed to the recriminatory petition ?

(22) Has the petitioner omitted to mention and include in his return of expenses material items of expenditure in connection with his election as per particulars stated in para 4 of the list of particulars annexed to the recriminatory petition and thus incurred in addition to other liabilities one of the material disqualifications by spending far in excess of the pecuniary limit ?

(23) Did the petitioner obtain and procure assistance for the furtherance of the prospects of his candidature through persons serving in the Government as per particulars stated in para 5 of the list of particulars annexed to the recriminatory petition ?

(24) Did the petitioner through his agents influence several voters to vote for himself by exploiting and making use of the name of Mahathma Gandhi, evoking the feelings and reference for him and raising an apprehension that his soul would hover and wreak vengence on those who did not so vote, and that they would otherwise incur supernatural and divine displeasure as alleged in para 4 of the recriminatory petition ?

(25) Did the petitioner through his agents and with the connivance of Thadaga Patel, Sri Nagappa at Bandra centre keep in waiting about 25 voters till the expiry of the time under false pretext and hopes alleging some imaginary error in the voters list regarding their eligibility to vote as alleged in para 5 of the recriminatory petition ?

(26) Is the recriminatory petition not maintainable for the reasons stated in paras 1 and 2 of the objections of the petitioner to it ?

(27) To what relief, if any, is the petitioner entitled ?

5. The case between the parties came up before us for evidence on 15th November 1952, 16th November 1952, 17th November 1952, 18th November 1952, 28th November 1952, 29th November 195 , 30th November 1952, 19th December 1952, 20th December 1952, 21st December 1952 and 22nd December 1952 and finally for arguments on 3rd January 1953, 4th January 1953, 5th January 1953 and 6th January 1953 in the presence of Sri S. K. Venkataranga Iyengar, Advocate for the petitioner, Sri K. Pattabhiraman, Advocate for the 1st respondent, and Sri M. Govinda Rao, Vakil for the 3rd respondent, and having stood over for consideration till this date, the tribunal on perusing the election petition, the pleadings, the entire evidence placed by the parties and taking into

consideration the arguments of the counsel at the bar, pronounced the following :—

ORDER.

6. This order is in respect of an election petition with its annexure, a list of corrupt and illegal practices, filed by the petitioner against respondents 1 to 9 under sections 80, 81 and 83 of the Representation of the People Act, 1951. The facts leading to the filing of the election petition by the petitioner against the respondents 1 to 9 as stated in it are as follows :—

(*a*) The petitioner and the respondents 1 to 9 had been duly nominated as candidates for election to the Legislative Assembly of the Mysore State from the Tarikere Constituency, which was the 67th constituency in the State, at the last general election which took place on 4th January 1952. The respondents 5 to 8 withdrew their candidatures thereafter. They too have been impleaded as respondents to this petition as per section 82 of the Act. After they withdrew, the petitioner and the respondents 1 to 4 only contested at the election. At the counting of votes which took place on 26th January 1952 the petitioner and the respondents 1 to 4 were declared by the Returning Officer to have obtained 8059, 8093, 6239, 1644 and 1152 votes respectively, and as the 1st respondent had obtained the highest number of votes, he was declared by the Returning Officer to have been duly elected and returned to the Legislative Assembly from the said Tarikere constituency. The declaration of the 1st respondent's election was published in the *Mysore Gazette* on 11th February 195 as per section 67 of the said Act. The 1st respondent thereafter lodged his return of expenses with the necessary declaration with the Returninng Officer and the same was published in the *Mysore Gazette* as per Rule 113 of the Rules made under the said Act.

(*b*) Thereafter the petitioner being aggrieved by the result of election as a duly nominated candidate presented his election petition within the time fixed by Rule 119 of the Rules for calling in question the election and seeking for the reliefs referred to above, to the Election Commission as per Section 81 (2) (*b*) of the said Act by sending it for delivery to it by registered post, and the Commission received and registered it as Election Case No. 136 of 1952.

(*c*) The petitioner seeks in this case primarily for the declaration that the election held on 4th January 1952 in the said Tarikere Constituency in its several booths, which were 44 in number, is wholly void on the grounds alleged in paras 4, 5 and 6 of the petition. (These grounds form the subject matter of the said issues 1, 2 and 3 settled in the case). He has sought for the alternative declaration that the election of the 1st respondent is void, and that he himself has been duly elected on the grounds alleged in paras 7, 8 (*a*) to 8 (*g*), which contain the allegations of corrupt and illegal practices imputed to the 1st respondent and which correspond to the

allegation of illegal practices alleged in paras 1 to 7 of the list of particulars annexed to the election petition, and in paras 9, 10, 11 and 12. (These grounds form the subject matter of issues 4 to 14 referred to above).

(*d*) He therefore prays for the grant of the aforesaid alternative reliefs referred to above.

7. The 1st respondent in his objection statement to the election petition has pleaded as follows: The Election petition is not competent. It is barred by time as it has been made in contravention of Rule 119 of the Rules made under the said Act and it has also offended section 117 of the said Act, and hence there was no proper presentation of the petition. As the petitioner by his conduct in respect of his own candidature became liable to disqualification, penalties and forfeiture under the law, he is not entitled to maintain and prosecute this petition. The allegations made in paras 2 and 3 of the petition are true. But it is not true that any of the rule relating to the commencement of the poll was violated as alleged in para 4 of the petition. It is also not true that the seals of the ballot boxes were not in tact or secure as alleged in para 5 of the petition. The allegations made in paras 6 to 8 and in the list of particulars and also those made in paras 9 to 19 of the petition are not true. He is not guilty of any of the corrupt and illegal practices alleged against him. The allegations made in para 7 of the petition are vague. The petitioner is not entitled to a recount now on such vague allegations after he has exhausted his right to ask for a recount as per the rules by exercising it at the time of counting of votes by the Returning Officer. The election and the proceedings connected therewith have been duly conducted and require to be upheld. The petitioner would not have secured a majority of votes under any circumstances. The reliefs asked for are not legal and proper. He, therefore, prays that the election petition be dismissed with his costs.

8. The 3rd respondent in his objection statement has stated as follows: The petition is barred by time. He is not a necessary party to the case. The allegations made in paras 1 to 3 of the election petition are true. But the allegations made in paras 4 to 6 of the election petition are not true and those of para 7 of the election petition are vague. He is not concerned with any of the allegations made in para 8. He does not admit the averments made in paras 10 to 12 of the petition. The 1st respondent's election is legal and valid and the election petition is liable to be dismissed with his costs.

9. In the said recriminatory petition the 1st respondent has stated as follows: The notice of recrimination given by him, as per this petition under Section 97 of the Act is in time and valid as it has been given within 14 days of the publication of the election petition in the Official Gazette on 25th September 1952. The

petitioner himself and through his agents committed in respect of the election which is the subject matter of the election petition, major corrupt and illegal practices and non-compliance with the provisions of the Act and the rules framed thereunder which disentitle the petitioner to the said alternative relief sought for by him in his election petition. The petitioner himself is guilty of the corrupt and illegal practices referred to in paras 3 (*a*) to 3 (*e*) which correspond to those stated in paras 1 to 6 of the list of particulars annexed to it. (The allegations made in paras 3 (*a*) to 3 (*e*) which correspond to paras 1 to 6 of the list of particulars annexed to the recriminatory petition form the subject matter of issues 19 to 23 referred to above). The petitioner had also exploited the feelings and reverence to Mahathma Gandhi which the voters cherished and raised an apprehension in them that if they should not vote for the congress candidate his soul would hover and wreak vengence on them. The petitioner through his agents and with the connivance of Thadaga Patel, Sri Nagappa in Bandre centre kept in waiting 25 voters, who, to their knowledge, would have voted for the 1st respondent. till the expiry of the time, under false pretext and hopes alleging some imaginary error in the voters' list. (These allegations form the subject matter of issues 24 and 25). He (the 1st respondent) submits that on account of the aforesaid corrupt and illegal practices and election offences committed by the petitioner, he is not entitled to be declared that he has been duly elected.

10. The petitioner has in his objection statement to this recriminatory petition stated as follows : The recriminatory petition is not maintainable as it has been filed even before the tribunal after giving a finding as regards the said primary relief against him has called upon him to adduce evidence to substantiate his claim for the alternative relief. (This contention forms the subject matter of the 26th issue settled in the case). The allegations made in paras 3, 4 and 5 are all false. He is not guilty of any corrupt and illegal practices as alleged in the recriminatory petition and also in the said list of particulars annexed to it. He therefore prays that the recriminatory petition be dismissed with his costs. (Para 11). On the pleadings relating to the election petition and the recriminatory petition the issues referred to above have been settled.

12. On the side of the petitioner 105 witnesses have been examined and documents, Exhibits—A to JJJJJ, have been filed, and on the side of the 1st respondent 20 witnesses have been examined, and documents, Exhibits 1 to 27, have been filed. On the side of the 3rd respondent no witness has been examined and no document has been filed.

13. We shall first take up for adjudication and decision the aforesaid issues relating to the recriminatory petition. On 22nd December 1952 the counsel for the 1st respondent submitted to

the tribunal that he (the 1st respondent) would not adduce any evidence in respect of the issues relating to the recriminatory potition, the burden of proving which lay on him (the 1st respondent). Issues 19 to 25 relating to the recriminatory petition involve questions of fact and the burden of proving them lies heavily on the 1st respondent. The 1st respondent has not adduced any evidence in proof of them, and hence these issues should be decided against him. We accordingly decide the issues 19 to 25 against the 1st respondent and in favour of the petitioner. As these issues are held against the 1st respondent, the recriminatory petition is liable to be dismissed. There is no force in the contention of the petitioner that the recriminatory petition is not maintainable for the reasons stated in paras 1 and 2 of his objection statement. The election petition with the list of particulars was published in the Official Gazette of the State on 25th September 1952 as per Section 90 of the said Act. If the 1st respondent desired to give notice of his intention to adduce evidence against the petitioner as per Section 97 of the Act, he should do so within the time presecribed, that is, within 14 days of the publication of the said election petition on 25th September 1952 as per the proviso to the said Section 97 of the Act. Hence, he had no other alternative except to file his recriminatory petition within 14 days from 25th September 1952. He has accordingly filed his recriminatory petition on 8th October 1952. He could not have, having regard to the provision to section 97 of the Act, postpone the filing of the recriminatory petition till after the tribunal gave a finding on the question as to whether the election was wholly void or not. If he had done so, the recriminatory petition would have been out of time. As the petitioner has claimed the alternative relief referred to above, and as the 1st respondent intended to file the recriminatory petition in respect of this alternative relief, he has properly filed it in time without waiting for a finding of the tribunal on the primary relief. Hence, we hold that the recriminatory petition is maintainable and the contentions to the contrary urged by the petitioner in paras 1 and 2 of his objection statement are untenable. This, our finding on the 26th issue.

14. We shall next take up for consideration and disposal the issues 1 to 18 and 27 which relate to the election petition filed by the petitioner. Of these issues, 15 to 18 involve only questions of law, and as these issues affect the maintainability of the election petition, we propose to deal at first these issues of law.

15. Beyond alleging in para 2(*a*) of the 1st respondent's objection statement that the election petition is not competent, it is not at all stated by the first respondent in it why it is not competent. Hence, there is no force in his contention that it is not competent. It is next contended by him that the election petition is barred by time. To determine whether the election petition is in

time or not it is necessary to determine whether the election petition has been presented under section 81 of the Act within the time fixed by Rule 119 of the Rules under the said Act. Rule 119 fixes the time within which an election petition calling in question an election can be presented under section 81 of the Act. It has two clauses, one applicable to a case where there is only one returned candidate against whom it is filed whatever may be the reliefs claimed as per section 84 of the Act, and the other clause (*b*) applicable to a case where there are more returned candidates than one at the election and the election petition calls in question the election as a whole. As in the present case there is only one candidate against whom the petitioner has presented this election petition, only clause (*a*) of the said Rule 119 is applicable to it. As per clause (*a*) such an election petition can be presented at any time after the publication of the name of the successful candidate under section 67 of the Act, but not later than 14 days from the date of the publication of the notice in the Official Gazette under Rule 113 of the Rules made under the said Act that the return of the election expenses of such successful candidate and the declaration made in respect thereof have been lodged with the Returning Officer. It is alleged in para 1 of the election petition that the declaration of the 1st respondent's election was published in the *Mysore Gazette* (*Extraordinary*) on 11th February 1952, and the notice of the lodging of the 1st respondent's return of expenses with his declaration with the Returning Officer was published in another *Mysore Gazette* (*Extraordinary*), dated 31st March 1952. In para 1 of his objection statement the 1st respondent admits that his election was published in the Official Gazette on 11th February 1952 and the lodging of the return of expenses made by him with the declaration was published in the Official Gazette on 31st March 1952. He thus, admits the correctness of these two dates. The 3rd respondent also admits the correctness of what is stated in para 1 of the election petition. As these dates are correct, the petitioner as per the said Rule 119, was entitled to present his election petition at any time after 11th February 1952 but within 14 days from 31st March 1952. The note made by the Election Commission on the election petition shows that it was received by its Secretary or the Officer appointed to receive it on 14th April 1952. As per sub-section (2) of section 81 of the Act, an election petition sent by registered post and delivered to the Secretary or the Officer so appointed should be deemed to have been presented to the Election Commission. The petitioner must have sent the election petition by registered post a few days before 14th April 1952 from Bangalore to enable its Secretary or other Officer so appointed to receive it on 14th April 1952 at New Delhi. As the Officer so appointed has received the election petition on 14th April 1952, it must be deemed, therefore, having regard to his provision of law, to have been duly presented to the Election Commission on the day on which it was given to the postal authorities at Bangalore for

transmission and delivery to its Secretary or the other Officer so appointed. Even if it is held that the election petition was presented by the petitioner to the Election Commission on 14th April 1952 when its Officer so appointed received it by registered post, the election petition is in time as it was presented on the last date of limitation. The learned council for respondents 1 and 3 contend that, as the election petition was amended on 25th October 1952 to claim the said primary relief, it must be deemed to have been presented only on 25th October 1952, and hence the election petition is out of time having regard to the said Rule 119. There is no force in this contention. In the first place, for the reasons stated in our order allowing the application for amendment passed on 25th October 1952 the amendment of the election petition to claim the aforesaid primary relief does not introduce anything now into the election petition. Having regard to the allegations made in paras 4, 5 and 6 of the election petition, the prayer for a declaration that the election is wholly void was implicit in the election petition itself. By this amendment the petitioner has only made explicit what was previously implicit in the election petition. In the second place, the election petition cannot legally be said to have been presented on 25th October 1952 when the same was amended. As the tribunal has allowed the amendment prayed for after hearing objections of the respondents 1 and 3, the amendment dates back to the date of the election petition, and hence the amended election petition must be deemed to have been legally presented on the date on which the original election petition was presented as per section 81 of the Act. As shown above, the original election petition was presented within time as per the said Rule 119, and hence, the amended election petition must be deemed to have been presented in time. Hence, the aforesaid contention cannot be legally sustained at all. We, therefore, find on the 15th issue that the election petition is competent and is not barred by time as pleased by respondents 1 and 3. It has not been shown by the 1st respondent how he contends that there was no proper presentation of the election petition by the petitioner. One of the modes of presenting an election petition as per Rule 81(2)(*b*) of the Act is by sending it by registered post and delivering it to the Secretary of the Commission or other Officer so appointed to receive it. As shown above, the petitioner has sent it in time by registered post at Bangalore and it has been delivered to the Officer so appointed on 14th April 1952. The contention of the 1st respondent that the election petition was not presented properly is, therefore, without substance. Nor is there any force in his contention that the petitioner has not complied with the provisions of Section 117 of the Act. As per Section 117 of the Act, the petitioner should enclose with his petition a Government Treasury receipt showing that a deposit of Rs. 1,000 has been made either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary of the Election Commission for the costs of the

petition. That the petitioner has complied with the provisions of section 117 is clear from the petition itself. The petition shows that the petitioner has deposited a sum of Rs. 1,000 as security for costs as per the said section 117 and has enclosed the State Huzur Treasury receipt, dated 11th April 1952, for the said amount with the election petition. The respondents 1 and 3 have not in their objection statements seriously disputed the allegation made by the petitioner in para 12 of the election petition regarding the deposit of the security amount made by him. Section 85 makes it mandatory that the election petition should be dismissed if the petitioner does not comply with the provisions of section 117 of the Act. The Election Commission, in view of this provision of law, would have dismissed the election petition if the petitioner had not complied with the provisions of section 117 of the Act. The fact that it has, after receiving the election petition, constituted this Tribunal and sent the election petition for trial to it shows that what is alleged by the petitioner in para 12 of his election petition regarding the security amount is true. On the 16th issue we hold that the election petition was duly presented and that it has not offended section 117 of the Representation of the Peoples Act, 1951.

16. The 1st respondent contends that, as the petitioner has by his conduct in respect of his own candidature become liable for disqualification in addition to other penalties and forfeitures under the law, he has no right to present this election petition under section 81 of the Act. There is no force in this contention. In the first place, it is not stated in section 81 of the Act that a person subject to any such disqualifications, penalties and forfeitures is not competent to present such an election petition. As per this section, an election petition may be presented by any candidate at such election or by any elector. As alleged in paras 1 to 3 of the election petition, the petitioner was one of the duly nominated candidates for the election, and he contested at the election with the respondents 1 to 4. He is therefore, competent to present and prosecute the election petition as per Sections 80 and 81 of the Act. In the second place, even if such disqualifications, penalties and forfeitures disentitle a person to present an election petition, no authority competent under the Election Law had declared prior to the presentation of this election petition that the petitioner was subject to such disqualifications, penalties and forfeitures, and hence not competent to present and prosecute an election petition. In the third place, the 1st respondent has failed to prove the several allegations made by him in his recriminatory petition, which, if substantiated, would make the petitioner liable for such disqualifications, penalties and forfeitures, and hence, issues 19 to 25 which relate to the recriminatory petition have been held against him and in favour of the petitioner. Thus, the 1st respondent has miserably failed to prove that by his own conduct in connection with his candidature the petitioner has become liable for disqualification, penalties and

forfeitures. Hence, it cannot be said at all as the 1st respondent contends, that by reason of such disqualification, penalties and forfeitures the petitioner has no right to present and prosecute the election petition. The petitioner is, therefore, legally entitled to present and prosecute this petition. We, therefore, decide the 17th issue in the negative.

17. It is contended by the 1st respondent that the reliefs claimed are not proper and legal. In the course of his arguments the learned counsel for the 1st respondent contended that the said reliefs prayed for offend Section 84 of the Act as under it the petitioner should have claimed only one of the reliefs referred to in it. There is no force in this contention also. The petitioner does not claim in this case both the reliefs referred to in clauses (*b*) and (*c*) of the said Section 84 of the Act. He seeks for the relief referred to in clause (*c*) in the first instance, and for the relief referred to in clause (*b*) only if the said primary relief is not granted to him. The petitioner is entitled to the said primary relief referred to in the said clause (*c*) only if he proves the allegations made in paras 4, 5 and 6 of the election petition, and also if he establishes that these allegations justify the tribunal holding legally that the said election is wholly void. If the tribunal holds that the petitioner is not entitled to the said primary relief on the ground that the allegations made in paras 4, 5 and 6 have not been proved or on the ground that even, if those allegations are true, they do not legally warrant the declaration by it that the election is wholly void, nothing comes in the way of the tribunal granting the alternative relief if the petitioner makes out a case that he is entitled to at least the alternative relief. It is for this reason that the petitioner has prayed for the alternative relief. If the tribunal grants the primary relief, it cannot grant at all the alternative relief, and if on the other hand, it refuses to grant the primary relief, the tribunal can grant to the petitioner the said alternative relief, if the petitioner has made out a case for it. There is, therefore no force in this contention also. We, therefore, hold on the 18th issue that the reliefs claimed are legal and proper. In the light of our findings on issues 15 to 18, we hold that the election petition is maintainable legally.

18. We shall next take up for consideration and decision the issues 1 to 14. Of these, issues 1 to 3 relate to the said primary relief, and the issues 4 to 14 relate to the said alternative relief. The said issues 1 to 3 as they relate to the primary relief are of greater importance than the said issues 4 to 14 relating to the alternative relief, for, if the tribunal should decide these issues in favour of the petitioner and if on the basis of the findings on these issues it should hold that the election is wholly void and grant the said primary relief as prayed for, the Tribunal is not required to grant the alternative relief to which the issues 4 to 14 relate. Hence, we propose to take at first for consideration, issues 1 to 3. As shown above, the

issues 1 to 3 are based on the allegations made in paras 4, 5 and 6 of the election petition. These allegations, according to the petitioner's case, render the election wholly void. The point for consideration in this connection is whether the Tribunal can legally declare the election to be wholly void even if these allegations are true. This takes us to a consideration of the circumstances which should be present for the Tribunal to declare the election to be wholly void, which is the relief referred to in Section 84(*c*) of the Act. Section 100(1) of the Act refers to the conditions that should be present for the declaration by the Tribunal that the election is wholly void and these are referred to in its clauses (*a*), (*b*) and (*c*). It is significant to note that the provisions of the said Section 100 (1) do not justify the Tribunal to declare an election to be wholly void even if there has been a gross violation of the provisions of the Constitution or of this Act, or of any rules or orders made under the Act, or of any other Act or rules relating to election. For all breaches of such provisions of law and for remedies, consequent of such breashes there is clause (*c*) of sub-section (2) of section 100 of the Act, according to which, if there is a non-compliance with any such provision of law, the election of the returned candidate should be declared to be void and that too only if such non-compliance has materially affected the result of election. In the said paras 4, 5 and 6 of the election petition, the petitioner has alleged certain facts which, according to him, involved a breach of the election law. If these facts are established, and if they involve a breach of the election law, as under section 100 (1), contravention of the election law does not render an election wholly void, the Tribunal has to consider whether a breach of or non-compliance with the provisions of the Election Law has materially affected the result of election so as to render the election of the returned candidate, *i.e.*, the 1st respondent, void. The petitioner in his election petition does not seek for a declaration that the election is wholly void on any of the grounds stated in clauses 1 (*b*) and (*c*) of Section 100 (1) of the said Act. As the election can be declared to be wholly void by the Tribunal only if the said grounds referred to in clauses (*a*), (*b*) and (*c*) of section 100 (1) are present, none of the allegations made in the said paras 4, 5 and 6 of the election petition, even if true, can legally be said to justify this Tribunal in declaring the election to be wholly void. In the course of his, arguments the learned counsel for the petitioner submitted that the grounds for declaring an election to be wholly void as set out in the said section 100 (1) are not exhaustive but only illustrative, and that if some of the mandatory provisions of the Election Law are violated, the Tribunal can legally declare the entire election to be wholly void. There is no force in this contention. The grounds on which the election should be declared to be wholly void as set out in the said section 100 (1) are exhaustive and not merely illustrative as contended by him. If the legislature intended that the violation of the

mandatory provisions of law should justify the declaration that the election is wholly void, it would have so stated in Section 100 (1) alone instead of enacting Section 100 (2) (c), which provides for all breaches of law including the provisions of the Constitution which warrant the declaration of the election of the returned candidate as void if they should materially affect the result of election. In the course of his arguments the learned counsel for the petitioner drew our attention to the provisions of Section 58 of the Act and contended that, as per this Section, as the seals of the ballot boxes relating to the Polling booth No. 1 of Ajjampur, *i.e.*, booth No. 67-16, were not in tact, the election is void. There is no force in this contention also. Sub-section (1) of section 58 enacts that if the conditions referred to in it are present, the election to which such ballot box or ballot boxes relate shall be void, but ony in respect of the polling station or of one of the booths where the polling station has more than one booth at which such ballot box or boxes was or were used and no further. Sub-section (2) vests in such an event in the Returning Officer a power to hold a fresh poll at such polling station or booth. The said power as per this section to direct a fresh poll vested in the Returning officer should be exercised by him before the counting of the votes in the ballot box or boxes, and after such counting of votes the power cannot be exercised by him also. The said power, as per this Section 58 cannot be exercised by the Eelction Tribunal at all, for, in the first place, it does not rest in the Election Tribunal a power to declare the election at such a polling station or booth as void as it has only power under Section 84 (*c*) read with Section 100 (1) of the Act to declare the entire election to be void if the conditions referred to in Section 100 (1) are present, and such a power can be exercised only after the stage referred to in Section 58 has passed. In the case on hand, the Returning Officer P.W. 16 has found that the ballot boxes of the said booth No. 67-16 of Ajjampur had not been tampered with and hence, he has directed the counting of votes recorded in them and on the basis of such counting has declared the 1st respondent to have been duly elected. Hence, under section 58 of the Act, this Tribunal has no power to declare the election to wholly void. In the course of his arguments. the learned counsel for the petitioner drew our attention to the rule in "Woodword *vs.* Sarson" (*Vide*: Nanakchand's Law of Practice and Election at page 220) as to the conditions that should be present for a declaration that an election is wholly void by the common law applicable to the parliamentary elections. In view of the fact that the Representation of the People Act, 1951, under which this election petition has to be tried, lays down by its section 100 (1) the conditions that should be present for declaring an election to be wholly void, and also in view of the fact that the petitioner does not seek for a declaration that the election is wholly void on any of the grounds stated in section 100 (1) of the Act, the said rule in "Woodword *vs.* Sarson" is not helpful in this

case. We are, therefore, of the view that, as section 100 (1) of the Act does not apply, we cannot declare the election to be wholly void. If there are infractions of section 58 or of the rules relating to the sealing of the ballot boxes in this case, then the matter comes within the purview of clause (c) of section 100 (2), and if they materially affect the result of the election, then only the election of the returned candidate should be declared to be void.

19. Of the three issues referred to above relating to the primary relief, we propose to deal with the second issue to start with as it has a bearing on the decision on the 1st issue. This issue relates to the alleged infringement of the rules relating to paper seals used to seal and secure the ballot boxes in the said polling 67-16 which was in the Municipal Office, Ajjampur Town. In this connection the following points arise for consideration: (1) whether there was an infringement of the election law relating to paper seals, and (2) whether such an infringement has materially affected the result of election.

(a) The unfortunate incident relating to the damage to the paper seals took place in the said booth No. 1 (67-16 of Ajjampur Town). As five candidates, namely, the petitioner and the respondents 1 to 4 contested at the election for a seat to the State Legislative Assembly from the Tarikere Constituency, there were in the said booth five ballot boxes, and these have been produced and marked as M.Os. 1 to 5 as stated by the Returning Officer P.W. 16. Each of these boxes had a mechanical device for not only locking and opening it but also for closing and opening the slit in the lid meant for insertion of ballot papers. A ballot box of this type can be sealed and secured only by the use of a paper seal, and the paper seal having the signature or seal of the Returning Officer and those of the candidates or their agents, if any, can be seen through the window of the lid after it is so sealed and secured. As it has the aforesaid mechanical device, once the box is locked, it cannot be opened without breaking the paper seal for getting hold of the thread inside the box which controls the locking device. The ballot box can be locked and the slit in the lid of the box can be closed by operating the knob which is in its outer surface. A slight twist of this knob locks the box, and a further twist of it closes the slit. As required by sub-rule (3) of rule 21, the presiding officer in a polling booth having such boxes should before commencement of the poll fix the paper seal having his signature or seal and also the signatures or seals of the candidates or their agents, if any, in the ring portion meant therefor in each such paper seal, and then secure and seal each box in such a manner that the slit of the box for insertion of ballot paper therein remains open as per the directions contained in sub-rule (iii) of the said rule 21.

(b) The Presiding Officer P.W. 17 has explained in his report Ex-NN3, of which Ex. NN is a copy, the circumstances under which the paper seals fixed in these ballot boxes came to be damaged and

why damaged paper seals were used for sealing and securing four of these five ballot boxes before the commencement of the poll in the said booth. As stated by him in his report Ex-NN3 on 4th January 1952, before the commencement of polling in the said booth which had been fixed to commence at 8 A.M., he fixed the paper seals in each of the boxes in the place meant therefor, but instead of simply locking each of the boxes by twisting its knob to the extent necessary he, by giving it a greater twist, not only locked each of them but closed the slit meant for insertion of ballot paper. After the seals of these boxes became thus closed, he realised his mistake and he had no other alternative except to unlock the boxes. For this he had to tear the paper seals to get the thread that controlled the locking device in each of them. He had been given only six paper seals for sealing the five boxes of this booth. After he had sealed the five boxes with the paper seals, as stated above, he had only one spare paper seal. After the aforesaid mishap happened, he used the spare paper seal for sealing one of the five ballot boxes. As he had no more paper seals with him to seal the other four ballot boxes, he was compelled to use only the damaged paper seals to seal them. He sealed three out of the remaining four boxes with these damaged seals. For sealing the remaining ballot box, a slip of white paper to which the ring portion of a seal was pasted, was fixed in such a way that the ring portion having his signature etc., appeared through the window of the lid of the box. Thereafter the ballot boxes were arranged in the booth in proper order for polling and thereafter the polling commenced. Exs-MM (1)*a*, MM(1)*b*, and MM (1)*c* are the damaged paper seals. On account of this mishap to the ballot boxes polling in this booth commenced at 8-25 A.M. instead of at 8 A.M. which was the time fixed for the commencement of the poll in it. This mishap would perhaps not have happened if the ballot boxes having such complex mechanical devices had not been supplied and also if sufficient number of paper seals had been supplied.

(*c*) That this explanation given by the Presiding Officer at the earliest opportunity was not an after-thought is abundantly clear from the evidence adduced on the side of the petitioner himself. As stated by the Presiding Officer P.W. 17, on receiving the report Ex-NN5, of which Ex-NN2 is a copy, for his remarks from the Returning Officer P.W. 16, he sent his report Ex-NN3 to the Returning Officer in which he has explained, as shown above, the circumstances under which the damaged paper seals came to be used in the ballot boxes before they were made ready for polling. He swears that what he did as regards the circumstances set out in Ex. NN3 was done by him *bona fide* and innocently and that all those circumstances happened before poll actually commenced in that booth. That his evidence regarding these facts is true is clear also from the evidence of the Returning Officer P.W. 16. As stated by him (P.W. 16), on 4th January 1952, in the evening, the Assistant Returning Officer told him orally about the circumstances

under which the paper seals of the ballot boxes were damaged in the said booth before polling and after receiving that information he came to Ajjampur on that night to make enquiries in that connection. On the next day, *i.e.*, on 5th January 1952, the Assistant Returning Officer gave him the report Ex-NN5, dated 4th January 1952. On receiving it he called for a report from the Presiding Officer P.W. 17. In response to it the Presiding Officer and Polling Officer H. R. Srinivasa Rao of the said Booth No. 1 of Ajjampur gave the reports Exs-NN3 and NN4. On receiving these reports he (P.W. 16) sent them to the Chief Electoral Officer of the State, who, in turn, reported the contents of Exs-NN3, NN4 and NN5 to the Election Commission, New Delhi. Ex-PP is a copy of the telegram received on 10th January 1952 by the said Chief Electoral Officer from the Election Commission and this was sent to the Returning Officer through the Deputy Commissioner, Chikmagalur. This telegram directed the Returning Officer to decide on actual facts and law whether there was scope for foul play in procedure followed, and in case he was satisfied that there was no physical possibility of any foul play, he might accept the ballot boxes in question as good, and if otherwise he should order a re-poll and ask the Commission for approval of date, etc., for such re-poll. Ex-QQ is a copy of a letter concerning the said telegram which was also received by the Returning Officer. Ex-RR is another covering letter from the Deputy Commissioner, Chikmagalur forwarding copies of some D. O. letters. Ex-SS is a copy of the letter from the Deputy Commissioner, Chikmagalur to the said Chief Electoral Officer, seeking for instructions as to whether he might direct the Returning Officer to hold an enquiry as suggested therein. The Chief Electoral Officer did not take any action on the original of Ex-SS. Thus, his (P.W. 16's) evidence also confirms the truth of the evidence of the Presiding Officer P.W. 17 as regards these facts.

(*d*) That the candidates and their agents were convinced that the paper seals of the ballot boxes were damaged, and thereafter the damaged seals were used for sealing the ballot boxes, for *bona fide* reasons before the commencement of the poll on that date by the Presiding Officer, as stated in Ex-NN 3 is also clear from the evidence on record. As stated by the Returning Officer P.W. 16, he followed carefully the instructions contained in the original of Ex-SS before he got the ballot papers in these five boxes counted on 25th January 1952. Before getting them counted he got the contents of Exs-NN 3 and NN 4 read and explained to the petitioner and the other candidates and their agents who were present. The petitioner and the other candidates then said that they had no objection to the counting of votes in these ballot boxes as they were convinced that the mistake committed by the Presiding Officer P.M. 17 was innocent and *bona fide*, and to this effect signed the statement Ex-II, dated 26th January 1952. P.W. 16 has also identified Ex-II(*a*) as the signature of the petitioner. His evidence regarding these facts

(*a*) That in the said polling booth No, 1, 67/16 at Ajjampur the polling, which had been notified to commence at 8 A.M. on 4tl January 1952, did not commence till 8-25 A.M. is clear from the oral and documentary evidence on record.

(i) The Presiding Officer P.W. 17 of the said booth states in his evidence that the polling in the said booth which had been fixed to commence on that date at 8 A.M., actually commenced at 8-25 A.M. and that he closed the polling at 5 P.M. which was the closing hour, that the polling in that booth commenced at 8-25 A.M. because the ballot boxes had not been made ready for polling in it till 8-25 A.M. and not because the voters commenced to come into the booth at 8-25 A.M. is also clear from his evidence to the effect that by saying that the poll commenced at 8-25 A.M. he did not mean that the first person that voted come to the polling booth at 8-25 A.M. He definitely states that the first voter that came into the booth for voting much later than 8-25 A.M. and that the first voter recorded his vote between 8-25 A.M. and 9 A.M. P.W. 20, who was working as a Polling Agent of Sri T. L. Kalliah, a candidate for election to the House of People in the adjoining booth, P.W. 21 who is the President of Hobli Congress of Ajjampur, P.M. 10, who is the Patel of Ajjampur, and P.W. 34 have also confirmed the testimony of the Presiding Officer P.W. 17 by stating that the voting in the said booth commenced at 8-25 A.M. because the ballot boxes had not been made ready for polling.

(ii) The truth of the oral evidence of the aforesaid witnesses that polling in that booth commenced at 8-25 A.M. is also confirmed by the documentary evidence. In Exs-NN 3 and NN 4 also it is stated that it was 8-25 A.M. by the time the ballot boxes were made ready for polling. In Ex-II also it is stated that the polling in this booth commenced at 8-25 A.M. P.W. 60 states that they got the statement made by the Presiding Officer P.W. 17 that the polling in that booth commenced at 8-25 A.M. recorded in Ex-II before signing it.

(iii) From the oral and documentary evidence adverted to above, it is thus abundantly clear that though polling in that booth had to commence at 8 A.M. as per the Government notification issued under section 56 of the Act, it did not actually commence before 8-25 A.M. There is nothing improbable if the polling in that booth did not commence on that day till 8-25 A.M. As shown above, the Presiding Officer had by mistake

closed the slits in the ballot boxes and hence the paper seals which he had fixed in them had to be torn to unlock the boxes, and hence some time must have taken by him to open the ballot boxes, gum up the torn paper seals and refix the paper seals in the ballot boxes and secure them, and thus make the ballot boxes ready for polling. It is no wonder, therefore, if the polling actually commenced in that booth at 8-25 A.M. when the ballot boxes were made ready for polling.

(iv) We are, therefore, convinced that polling in that booth 67/16 did not commence at 8 A.M. but that it commenced at 8-25 A.M. when the ballot boxes were made ready for polling.

(*b*) The next point for consideration in this connection is whether the delay in the commencement of the poll in this booth involved any breach of the election law. Section 56 of the said Act says that the appropriate Government shall fix the hours during which the poll will be taken and the hours so fixed shall be published in such manner as may be prescribed. The proviso to this section says that the total period allotted on any one day for polling at an election in a constituency shall not be less than eight hours. As per this proviso, the total period allotted on any one day for polling cannot fall short of eight hours. The evidence on record shows that the Government of the State, in accordance with this section read with rule 16 of the Rules, had notified in the Official Gazette that the polling in the several booths in the said Tarikere Constituency would take place on 4th January 1952 from 8 A.M. to 12 NOON and from 1 P.M. to 5 P.M. The total period allotted by the said notification for polling on that day was thus eight hours. As shown above, the said Presiding Officer P.W. 17 has commenced the poll in this booth at 8-25 A.M. instead of at 8 A.M. and polling has continued thereafter in the morning till 12 NOON and in the afternoon from 1 P.M. to 5 P.M. By commencing the poll at 8-25 A.M. and not at 8 A.M. the total period of eight hours allotted for polling that day by the Government was reduced by 25 minutes by the Presiding Officer in violation of the aforesaid provision of the said section 56 of the Act. Having regard to rule 17(ii) of the Rules, the Presiding Officer had to close polling at 5 P.M. and he had no power to permit the continuance of polling for 25 minutes after 5 P.M. to make up for the loss of time to that extent in the morning. His evidence shows that he has closed polling at 5 P.M. We are, therefore, of the view that the commencement of the poll at 8-25 A.M. instead of at 8 A.M. involved a contravention of the provisions of section 56 of the Act.

(*c*) The next point for consideration is whether the delay of 25 minutes in the commencement of the poll in that booth on that date has materially affected the result of election. As the Government had, under section 56 of the Act, notified in the Official

Gazette to the voters that the election in that booth would take place during those hours on that date, the voters were entitled to come to that booth on that date at any time as it suited their convenience during those hours for exercising their franchise. If, by reason of the unauthorised commencement of the polling in that booth on that day at 8-25 A.M. the electors who had come to this booth between 8 A.M. and 8-25 A.M. went away to attend to their urgent work without waiting to record their votes in the booth, then it should be said that the commencement of the polling at 8-25 A.M. instead of 8 A.M. by reason of the ballot boxes not being kept ready for polling, has materially affected the result of election. That the voters who had come to this booth on that date to give their votes between 8 A.M. and 8-25 A.M. went away without recording their votes in the ballot boxes kept in the booth to attend to their pressing engagements, because the polling did not commence in it till 8-25 A.M. by reason of the ballot boxes not being kept ready for polling is also clear from the evidence on record.

(i) P.W. 20 states that as the polling commenced in that booth at 8-25 A.M., some of the voters who had taken identification slips before 8-25 A.M. went away saying that they had to catch the shuttle train to go to the Shivane shandy. P.W. 21 also states in his evidence that as the polling did not commence in this booth even after 8 A.M. about 20 or 25 persons who had come to this booth to record their votes went away without doing so saying that they had to catch the train to go to the shandy at Shivane and that some of the congress volunteers, who were entitled to vote in this booth, and who had come to this booth for this purpose, also went away, without recording their votes, to catch the train to go to Shivane to work near Shivane polling booth on that day. P.W. 34 also states that, as the voters who had taken the identification slips were not allowed to enter the booth even after 8-20 A.M. some of them went away. P.W. 102 also states that, as there was delay in the commencement of poll in this booth on that day, about 40 or 50 persons who had come to this booth to vote went away, some towards the bus stand and some towards the Railway Station. There is absolutely no reason to disbelieve the evidence of these witnesses regarding these facts. As there was a delay of 25 minutes in the commencement of the poll in this booth, it is no wonder if some of the voters who had come to the booth at 8 A.M. under the impression that they could record their votes at that hour and get away and attend to their personal engagements elsewhere, had to leave the booth without recording their votes.

(ii) We shall next refer to the evidence of the witnesses who actually went to this polling booth on that day between 8 A.M., 8 and 8-25 A.M. and who could not give their votes because polling commenced at 8-25 A.M. P.W. 68 (No. 1093 in the voters' list Ex-EE1 of this booth) P.W. 69 (No. 985 in Ex-EE1), P.W. 70 (No. 1041 in Ex-EE1), P.W. 71 (No. 466 in Ex-EE1), P.W. 72 (No. 800 in Ex-EE1), P.W. 73 (No. 887 in Ex-EE1), P.W. 74, P.W. 75 (No. 564 in Ex-EE1), P.W. 76 (No. 652 in Ex-EE1), P.W. 77 (No. 434 in Ex-EE1), P.W. 78 (No. 284 in Ex-EE1), P.W. 79 (No. 821 in Ex-EE1), P.W. 80 (No. 815 in Ex-EE1), P.W. 81 (No. 902 in Ex-EE1), P.W. 82 (No. 304 in Ex-EE1), P.W. 83 (No. 242 in Ex-EE1), P.W. 94, P.W. 95 (No. 1009 in Ex-EE1), P.W. 96 (No. 650 in Ex-EE1), P.W. 97 (No. 666 in Ex-EE1), P.W. 98, P.W. 99 and P.W. 100 (No. 472 in Ex-EE1), who were all as residents of Ajjampur, had to record their votes in the said booth No. I.E. 67/16, and who had gone to the said booth No. I between i and 8-25 A.M. on 4th January 1952 for the purpose of recording their votes, have stated in their evidence that when they went to the said polling booth after taking identification slips to give their votes, they were not allowed to get into the booth, the door of which was closed, on the ground that something had gone wrong inside and something was being done to set matters right and hence there would be delay of about half an hour in the commencement of the pool in it, and that as they could not wait there, they left the booth and went away without recording their votes. The said P.Ws. 72, 73, 76, 80, 82, 95 and 96 state that they had to leave the polling booth to catch the 8·20 A.M. shuttle train at Ajjampur to go to Shivane for the shandy. The said P.Ws. 68 and 77 state that they as congress volunteers, had to go to work near the polling booth at Shivane and hence, they left the booth to catch the said 8-20 A.M. shuttle train at Ajjampur railway station. P.Ws. 69 and 71 state that they left this polling booth as they had to go urgently to Chickjajur by the 8-45 A.M. train. P.W. 70 states that he had to leave the polling booth to go to Sollapur by the H.I.H. bus to work there as a cook for the polling officers. P.W. 74 states that he left the polling booth as he had to go by bus urgently to Tarikere. P.W. 75 states that he left the polling booth to go to Baggavalli urgently. P.W. 78, who is a worker in the Electric Office at Ajjampur, states that he had to leave

the polling booth as he had to report himself for duty in the Electric Office. P.W. 79 states that he left the polling booth to go by bus to the shandy at Arsikere. P.W. 81 states that he had to leave the polling booth as he had to go to Ramagiri by train. P.W. 83, who is a cooli by profession, states that he left the booth as he had to go and work as a cooli. P.W. 94 states that he left the booth with his brothers Gurudas and Venkataswamy to catch the shuttle train to go to Rayadurga as their grandmother was ill there. P.W. 97 states that he left the polling booth as he was not well. P.W. 98 states that he left the polling booth to go to jatra at Tallikote to work as a tailor. P.W. 99 has stated that he left the polling booth as he had to go and work in his cattle farm. P.W. 100 states that he left the polling booth to go to Lakkavalli by bus. These witnesses have explained why they left the polling booth without recording their votes. P.Ws. 80, 95 and 96 have further stated that as their wives were also entitled to vote, their numbers in Ex-EE1 being 866, 1010 and 657, respectively, they too had come with them and that as they had to leave the polling booth for the reasons stated by them, their wives also left the polling booth without voting and went to their respective houses. P.W. 94 further states that with him his brothers Gurudas and Venkataswamy had come to the polling booth for voting, and that when he left the booth for the reasons stated by him, his brothers too left it without voting. He has produced the identification slips Exs-LLLL, LLLL(1) and LLLL(2) to prove that they had gone to the polling booth on that day for voting. P.W. 98 further states that with him his father, his elder brother and his mother, bearing electoral numbers 900, 902 and 901 in Ex-EE1 respectively, had come to the said booth and for the reasons stated above, they too left the booth with him without voting. All these witnesses except P.W. 74 have stated that they and their aforesaid relatives who had gone to the booth intended to vote for the congress candidate, the petitioner. The marked list Ex-EE 1 shows that, as there are no markings against the names of these witnesses and their aforesaid relatives they did not exercise their right to vote as stated by them. In the light of their evidence, if they all had voted, the petitioner would have secured some more votes. Of course, the petitioner has not examined all the electors who had come to the polling booth between 8 and 8·25 A.M. but who went away without recording their

votes by reason of the commencement of the poll at 8·25 A.M. He was not bound to examine all of them. Further it cannot be said that it was possible for him to do so. All that he has to show is that by reason of the delay of 25 minutes in the commencement of the poll in this booth the result of election was materially affected as some of the voters who had come there left the booth without voting. This he has established, beyond doubt, satisfactorily. There are absolutely no reasons to disbelieve the evidence of these witnesses referred to above.

(iii) In the face of their evidence no reliance can be placed upon the evidence of P.W. 67, who states that people were going into the booth by 8 A.M. to record their votes. His evidence is manifestly opposed to that of the witnesses aforesaid as shown above. To discredit the testimony of the aforesaid witnesses examined on the side of the petitioner the 1st respondent has examined R.Ws. 3 and 4, who state that no shandy at Shivane was held on 4th January 1952, and R.W. 16 and R.W. 17 who state that there was no delay in the commencement of polling in the said booth, that no one said then that there would be any such delay, that, as they were standing in queue formation in front of the booth, some time elapsed before they got their turn to vote in the said booth, and that it is not true that because of the delay in the commencement of the poll, some of the voters who had come to the booth went away. The evidence of these witnesses, which is highly interested and discrepant, has not undermined in the least the evidence of the aforesaid witnesses examined on the side of the petitioner. Ex-JJJJJ shows that the Government had not prohibited shandy at all in Shivane on 4th January 1952. Ex-XXVI shows that only the police did not allow shandy to be held at Shivane on 4th January 1952 as the polling booth was close to the shandy maidan. It may be that the aforesaid witnesses of the petitioner who left the polling booth at Ajjampur to go to Shivane on that day to the shandy did not know that the shandy would not be held there at all, and they went there under the belief that shandy would be held that day there. Thus the evidence adduced on the side of the 1st respondent has not rebutted at all the clear and convincing testimony adduced on the side of the petitioner regarding this issue.

(iv) In his objection statement the 1st respondent states that there was no delay at all in the commencement of

the poll in that booth. In the course of his arguments his learned counsel stuck to this contention and submitted that as the voters had already come into the open enclosure round about the Municipal building at Ajjampur wherein the polling took place and were receiving the identification slips at 8 A.M., there was no delay of 25 minutes in the commencement of poll in that booth. In his view, not only the Municipal Office building but also the entire area round about it up to a radius of 100 yards, *i.e.*, up to the rope barricade, was the polling booth. There is no force at all in this contention. Ex-DD is a list of polling stations. It shows that the polling stations are located in the buildings referred to in its third column. Section 130 of the Act prohibits canvassing within a radius of hundred yards from the polling station. To comply with this provision of law there was that rope barricade. It cannot at all, therefore, be said that if a person entered the open area within the rope barricade, he entered the polling station. Rules 23 and 24 show that the acts referred to in them should be done inside the polling station. There is no evidence on the side of the 1st respondent to show that any of these acts was done by any voter inside the polling booth before 8·25 A.M. Receiving and identification slip from one of the persons stationed in this open area outside the polling booth is only an act preparatory to the polling inside the polling booth. As shown above, as the ballot boxes had not been kept ready for polling before 8·25 A.M. inside the Municipal building which was used as a polling booth, no one could have entered the polling booth in the Municipal building and voted before 8·25 A.M. It is next contended by the 1st respondent's counsel that the aforesaid witnesses examined on the side of the petitioner should have stayed as a matter of duty and voted instead of going away from the polling booth in a hurry. No authority was cited by him to show that they had to perform any such duty. It was next contended by him that if there was such a delay the petitioner or any other member of the congress organization would not have failed to complain about the delay to the authorities concerned in the same manner as one Subramanya Setty gave the telegram Ex-B on 4th January 1952 regarding refusal to admit congress agents into the polling centres. There is no force in this contention also. P.W. 21 states that when they asked the Presiding Officer P.W. 17 as to why there was delay in

polling, he said that some untoward thing had happened inside the polling booth and hence there was delay, and that the closing time would be extended to compensate for the loss of time. Probably this assurance on his part would explain why there was no complaint by any one regarding this matter and least of all by the petitioner who, as the evidence shows, was not near that booth at all that day. The Returning Officer P.W. 16 states the petitioner did not complain to him at the time of the counting of votes that as the ballot boxes were not made ready in the said booth, his voters went away. Evidently, as no useful purpose would have served by making such a complaint then to the Returning Officer, the petitioner did not make any such complaint to him then. It is next contended by him that the delay in commencement of the poll in that booth, if it caused prejudice, was a prejudice common to all the candidates and hence the petitioner cannot contend that the delay affected materially the result of election. There is no force in this contention also. The contest in this case is only between the petitioner and the 1st respondent, and the respondents 2 to 4 are not at all interested in the result of this case. The petitioner has every reason to contend that he was prejudiced by this delay.

(*d*) As shown above, the 1st respondent has been returned to the Legislative Assembly as a successful candidate by reason of the fact that he has secured 34 votes in excess of the votes secured by the petitioner. It is probable that, if those 40 or 50 persons who went away from the polling booth that day without recording their votes because of the delay in the commencement of the poll in it, had voted, the petitioner would have secured a large number of votes than the 1st respondent and succeeded at the election. The very small margin of votes by which the 1st respondent has succeeded at the election as against the petitioner should be taken into consideration in appreciating the controversy that the delay in the commencement of the poll in this booth has materially affected the result of election, and hence, the election of the returned candidate is void. [Dibrugarah (N.M.R.)] 1927, case No. 43 reported in Hammond Election Case, India and Burma 1920 to 1935, 337 is a case in point. In that case, the petitioner sought to have the election declared void on the ground that the result of the election had been materially affected by non-compliance with certain rules and regulations made under the Act. The petitioner succeeded in showing that the result of the election was materially affected by the breaches of regulation 22 referred to in it, inasmuch as about 36 voters who attended to vote for him at Moran and about 200 voters who attend to vote for him at Tinkhong Lower Primary School were unable to vote. It was

held in that case that had those electors been able to vote, the result of the election would have been materially affected inasmuch as the majority of the votes secured by the successful candidate was only 154, and hence, declared the election of the respondent void under rule 44 (c) of the Assam Electoral Rules. In the light of this ruling, as the difference between the votes which the 1st respondent had secured and those secured by the petitioner was only 34, the petitioner would have secured a majority of votes but for the non-compliance with the provisions of section 56 of the Act which has materially affected the result of election. On the first issue we hold, for the reasons stated above, that there has been an infringement of the rules relating to the time of commencement of poll by reason of the fact that polling at booth No. 1 of Ajjampur which had been fixed at Ajjampur to take place at 8 A.M. did not really take place until about half an hour later as alleged in para 4 of the petition, and that as this infringement of the said rules has materially affected the result of election, the election of the returned candidate, namely the 1st respondent, is void as per section 100(2)(c) of the Act.

21. We shall next take up for consideration the third issue. In connection with this issue it is necessary to consider whether the election has been vitiated by the material irregularity that in some polling booths, in particular booth No. 6 of Tarikere Kasaba and also polling booth No. 18 of Koratagere, the number of votes actually polled were found to be in excess of the number of ballot papers issued. For deciding this issue, it is necessary to ascertain how many ballot papers were given to the Presiding Officers of each of these booths, how many ballot papers were issued by them and how many ballot papers were found in the respective ballot boxes of the five candidates. For determining this point, it is necessary to examine the accounts relating to the ballot papers which are found in the forms 10 and 14 relating to the said booths 6 and 18.

(*a*) At the time of the examination of the Returning Officer, P.W. 16 form No. 14 of the said booth 67/18 of Koratagere and forms No. 10 and 14 of the booth 67/6 of Tarikere Kasaba were not available. Form No. 10 of the said booth 67/18 was produced by him then and it was marked as Ex-ZZ. But later on his clerk Sheik Hyder P.W. 21 produced Ex-GGGG series (eight in number) which are form No. 10 and Exs-JJJJ series which are five sets of form No. 14, one set being appropriated to each candidate. As stated by him, Ex-GGGG1 which is a blank form No. 10 relates to the said booth No. 67/6 of Tarikere Kasaba and Ex-HHHH is the charge list of the said booth No. 67/6 of Tarikere Kasaba. It is seen from the ballot paper account Ex-ZZ, one thousand ballot papers were received by the Presiding Officer of which 352 were unused, I was rejected, and hence the probable number of ballot papers in the boxes was 647. But Ex-JJJJ relating to booth No. 67/18 shows that the total ballot papers found in the five boxes of the said booth was 655. Hence, there were eight ballot papers in excess, *i.e.* eight votes had been

polled in excess. As regards booth No. 67/6 of Tarikere Kasaba, form No, 10 ballot paper accounts are not forthcoming as Ex-GGGG1 relating to it is blank. Ex-HHHHH1 which is not intelligible and the corrections in which have not been initialled even, does not help to determine what should be the number of ballot papers in the ballot boxes of that booth. Ex-JJJJ relating to this booth says that there were in all 339 ballot papers in the 5 ballot boxes of this booth. In the absence of the ballot accounts of this booth, it is not possible to state by how many ballot papers the ballot papers in the ballot boxes of this booth exceed the ballot papers account in form No. 10 of this booth. In the course of his arguments the learned counsel for the petitioner submitted that one ballot paper was in excess in the ballot boxes of this booth.

(*b*) If there were 8 ballot papers in excess in the boxes relating to booth No. 67/18 as found after checking and one ballot paper in excess in the boxes of booth No, 67/6 as submitted by the petitioner's counsel, the point for consideration is whether these discrepancies materially affected the result of election to render the return of the 1st respondent void. As per the ruling in Insein 2 H.I.E.P. 158 referred to in Law and Practice of Elections and Election Petitions by Nanakchand at page 216, where the discrepancy was 25 votes, it was held that no importance could be attached to the discrepancy between the number of tokens and the tokens found in the ballot box as there was no evidence on the side of the petitioner raising the presumption of stuffing or misconduct on the part of the Returning Officer in favour of some particular candidates, and, hence, it was held not to have affected the validity of the election. In the case on hand also, there is no evidence on the side of the petitioner raising the presumption of stuffing or misconduct on the part of the Returning Officer, P.W, 16 in favour of some particular candidate. The petitioner has not also shown that this excess ballot papers found in the boxes involved the contravention of any law and such a contravention has materially effected the result of election. (*Vide* also the case referred to at page 213 in the said Nanakchand's book). Having regard to the majority of votes secured by the 1st respondent as against the petitioner, if his election is not rendered void by any of the conditions referred to in sub-section (2) of section 100, even if the nine votes are deducted from the total number of votes polled by him, he will still have a majority. If, by reason of the presence of any of the conditions referred to in sub-section 2 of section 100, the election of the 1st respondent becomes void and the petitioner has to be declared to have been duly elected, then, considering the majority of votes which the petitioner has secured as against the votes polled by the respondents 2, 3 and 4, even if these nine excess votes are deducted from the votes polled by the petitioner, he will still have a majority of votes to his credit as against the respondents 2, 3 and 4. Hence, the aforesaid discrepancy in the votes polled does not in the least

affect materially the result of election. Hence, on the third issue, we hold that the election has not been vitiated by the material irregularity that in some polling booths. in particular the polling booth No. 6 of Tarikere Kasaba and also in polling booth No. 18 of Koratagere, the number of votes actually polled were found to be in excess of the number of ballot papers issued.

22. We shall next take up for consideration and decision the fourth issue which deals with the controversy relating to impersonation. In connection with this issue we have to determine whether any of the votes recorded in favour of the 1st respondent were invalid by reason of the fact that the persons that recorded them had impersonated alive or dead persons whose names appeared in the electoral roll. What constitutes the corrupt practice of impersonation is dealt with in sub-section (3) of section 123 of the Act. Two factors are necessary to constitute this corrupt practice: (1) There should be an application by a person for a ballot paper in the name of another person alive or dead, and (2) that the candidate or his agent or some other person with the connivance of the candidate or his agent procured or abetted such application by such person.

(*a*) Para 7 of the election petition deals with the charge of impersonation. In the list of particulars annexed to the election petition there is no reference to this charge at all. It is significant to note that in this 7th para the names of the persons that personated, the person who personated them and the polling booths in which the impersonation took place are not at all given. It is not also alleged in this para as to who procured or abetted such personation, nor is there a definite charge that it was the 1st respondent that abetted personation. In the absence of these particulars, it cannot be said that there is a definite charge of the corrupt practice of impersonation for the 1st respondent to meet. As observed by H. S. Doabia at page 191 in his book, Law of Elections and Election Petitions, it is essential that in a case of alleged impersonation the particulars of each instance, such as the name of the voter personated, his number in the roll, the polling station to which the voter belonged, the date on and the polling station in which the corrupt practice was committed should be given in the list of particulars. In the list of particulars it should also be alleged, as observed by him, at the same page 191, that there should be a definite allegation that the candidate or his agent abetted or procured the false personation. It should be remembered that the charge of impersonation is a quasi-criminal charge and suspicion, however strong, cannot take the place of legal proof. The petitioner contents himself by saying that this charge would be substantiated on a recount. It is strange that after making such a statement he has not applied even for a recount.

(*b*) In connection with this issue the petitioner has examined P.Ws. 55, 93, 103 and 105. P.W. 55 states that his younger brother

Somlanaika died about two or three years ago. The death extract or other reliable evidence has not been produced to prove that he is dead. In the course of his arguments the learned counsel for the petitioner drew our attenion to the name of the said Somlanaika bearing No. 54 in the marked voter's list Ex-TT34 of Thanigebylu, and contended that as there are markings against his serial number 54 in Ex-TT34, some one must have personated and recorded the vote. But there is absolutely no evidence on the side of the petitioner to prove that Somlanaika whose number is 54 is Somlanaika the deceased brother of P.W. 55. Even P.W. 55 has not so stated. There is also no evidence to prove who personated him and whether the 1st respondent procured or abetted his personation and whether that person voted for the 1st respondent. There is also no other convincing proof, as stated above, that the said Somlanaika is dead. His (P.W. 55's) evidence is therefore not relevant for this issue. P.W. 93 states that his mother Gangamma whose number in the voters' list Ex-TT of booth No. 67/1 of Tarikere Kasaba is 275, died about six months prior to the last election. He too has not produced any death certificate. The learned counsel for the petitioner contended that as there are markings against serial number 275 in Ex-TT, some one has personated her. But there is absolutely no evidence to prove that any person has personated her and voted for the first respondent. There is also no evidence to prove that the 1st respondent procured or abetted her impersonation. Hence, the evidence of P.W. 93 is not also very relevant for this issue. P.W. 103 states that as canvassing agent of the petitioner at the time of the last Assembly Election at Lingadahalli he prepared on enquiry Ex-MMMM, which is a list of persons whose names are mentioned in the electoral roll of the said Lingadahalli polling booth 67/35 and who were dead and also persons whose names also are entered in the said list but who were not available for voting. P.W. 105 states that as canvassing agent of the petitioner at the time of the last Assembly Election he prepared the list Ex-PPPP of dead persons whose names are entered in the list Ex-TT4, the Electoral roll of Tarikere booth No. 67/5. The evidence of these witnesses serves no useful purpose so far as this issue is concerned. There is no evidence to show that any persons personated the persons mentioned in Ex-MMMM or Ex-PPPP and voted for the 1st respondent, or that the 1st respondent or his agents procured or abetted such personation by them. They have no personal knowledge whether any persons mentioned in Exs-MMMM and PPPP are dead or alive. Their informants have not been examined. Hence, their evidence also is of no value so far as this issue is concerned.

(c) The petitioner in proof of this issue relies also on the fact that the marked voters' list of Lingadahalli polling booth No. 67/35 has not been produced by the Returning Officer P.W. 16 and also on the fact that in the marked voters' list Ex-TT5 of the polling booth No. 67/5 of Tarikere Kasaba in which there are only six markings

while as Ex-JJJJ series relating to this booth shows that as many as 674 persons have voted, and contends that there must have been a good number of impersonations in the said two booths, and that an adverse inference should be drawn against the 1st respondent in this connection. There is no force in this contention also. The petitioner came to know only at the time of the examination of the Returning Officer P.W. 16 that the marked voters' list of the said Lingadahalli polling booth was not available. He also came to know only at the time of trial that there are only six markings in Ex-TT4. To substantiate the charge of impersonation, the petitioner should have examined witnesses to prove such impersonations and also that the 1st respondent procured and abetted these impersonations and contended that as the marked voters' list of Lingadahalli has not been produced and as there are only six markings in Ex-TT4, he is at a disadvantage to adduce better evidence. This he has not done. Hence, there is no substance in the said contention. As per rule 32, the Presiding Officer of booth No. 67/5 should have sent the marked voters' list to the Returning Officer P.W. 16, which as stated by the latter in his evidence, is an important document. As per Rule 23(2) the Presiding Officer of booth No. 67/5 should have made proper markings in Ex-TT4. In the absence of evidence regarding impersonation in these booths, noncompliance with these rules cannot be said to materially affect the result of election, and hence, on this score the election of the 1st respondent cannot be declared to be void.

(*c*) On the 4th issue, therefore, we hold that it is not true that several votes were counted as valid in favour of the 1st respondent which really ought not to have been so counted as either some of them were impersonated votes or votes not of those of the actual voters found in the list by reason of the fact that in some cases the voters in the list were dead and in some other cases the voters did turn up as alleged in para 7.

23. The next issue for adjudication and decision is the 5th issue, which relates to the corrupt practice referred to in sub-section (6) of section 123 of the Act. This issue is based on the allegations made in para 8(*a*) of the election petition read with para 1(*b*) of the list of particulars annexed to the petition. In connection with this issue, the following points arise for consideration: (1) whether the bus in question belonging to Ahmed Jan had been taken under a special permit for the ostensible purpose of conveying the members of his family but really for the purpose of promoting the interests of a particular candidate in which he was interested: (2) whether the bus conveyed voters from Gowrapura to Sollapura on the election day: (3) whether the 1st respondent hired the said bus for the said purpose: (4) whether Ahmed Jan conveyed the voters from Gowrapura to Sollapura with the connivance of the 1st respondent; (5) whether the 1st respondent procured the said bus through the said Ahmed Jan as his agent for the said purpose; and (6) whether

the said Ahmed Jan has committed a minor corrupt practice by conveying voters in this bus from Gowrapura to Sollapur as per section 124 (2) read with section 123 (6), and if so, whether this minor corrupt practice has substantially affected the result of election.

(*a*) The bus in question, as the evidence on record shows, is a public service bus bearing No. MY 1347 X belonging to H.I.H. Bus service the proprietor of which is Ahmed Jan. This bus is plied for hire between Tarikere and Hosadurga *via* Ajjampur and Antharaghatta. It is not plied for hire at all between Gowrapura and Sollapur which are three miles apart. Ex-A, as stated by P.W. 3, is the application dated 3rd January 1952 made by the said Ahmed Jan to the District Magistrate, Chikmagalur, for a special permit to run the said bus as a private bus on two trips between Gowrapur and Sollapur on the election day to convey the members of his family only for voting in the polling booth at Sollapur on the election day. Ex-A(1) is the order of the District Magistrate on this application according the said permit as prayed for in it. Ahmed Jan, as per this permit, could not have conveyed in this bus on the two trips it was permitted to make any others except the members of his family. As stated by the Patel P.W. 24 of Gowrapur, there are in the family of the said Ahmed Jan only eight voters whose serial numbers are 367 to 374 in the voters' list Ex-TT 20 of Sollapur polling booth as indicated by Ex-TT20 (*a*). As his family consisted of only eight members, it is strange why the said Ahmed Jan applied for the permit to do two trips. It is significant to note that, as Ex-TT20 shows, only five out of the eight members of his family have voted in the said booth. In these circumstances, it is clear beyond possibility of doubt that the real purpose of obtaining the permit seems to be to take voters in it from Gowrapura to Sollapur for exercising their right to vote there in favour of a particular candidate in whom he was interested. The placard containing the symbol of a hut which was attached to the said bus while it made the trips to the polling booth at Sollapur clearly warrants the inference that he was interested in the 1st respondent whose symbol it was.

(*b*) The next point for consideration is whether the said bus conveyed voters free of charge on the election date from Gowrapur to Sollapur. That the said Ahmed Jan conveyed voters free of charge in his bus on the election day to and from the polling booth for the purpose of enabling them to vote there is not at all disputed as the 1st respondent's witnesses 5 and 11 themselves admit that the said Ahmed Jan conveyed voters free of charge on that date from Gowrapur to Sollapur. But the points of difference between the petitioner's version and the 1st respondent's version relate to the number of passengers the said bus carried on each of its trips to the polling both at Sollapur from Gowrapur and also the number of trips it made between Gowrapur and Sollapur on that date. As stated by P.W. 92 who was working as a cleaner under the said Ahmed Jan till four months ago when he gave up his service to attend to his

agricultural work, on the night of 3rd January 1952, at about 9 or 9-30 P.M., two thatties having the symbol of a hut were attached to this bus after its return to Tarikere and on enquiry he learnt from those who had come and tied them to the bus that Sowcar Ahmed Jan had directed them to do so. On the next morning this bus did not go to Hiriyur, as usual, as on the previous Thursday his employer had sent word to his bus agent at Tarikere to issue tickets to only passengers travelling between Tarikere and Ajjampur and not beyond Ajjampur, and also to four passengers to Antharaghatta. On the election day the bus was driven from Tarikere to Gowrapur. At Gowrapur the said Ahmed Jan asked him to bring persons who were willing to vote in the polling booth at Sollapur. He (P.W. 92) brought some of them who had assembled near the temple and who were willing to vote there. The bus left Gowrapur at 10-30 A.M. on its first trip with 30 or 40 passengers including himself in it and reached Sollapur. The bus was made to stop near Gangammanahalla which is at a distance of three furlongs from the polling booth at Sollapur and the said Ahmed Jan, who was in that bus, asked the voters to get down and go to the polling booth. The bus thereafter was taken to Antharaghatta. From Antharaghatta it came back to Sollapur gate and there the voters who had come from Gowrapur and who were standing boarded the bus and the bus brought them back to Gowrapur. The bus again took the voters who were waiting there and proceeded to Sollapur. There were in that bus 30 or 35 persons including himself and the said Ahmed Jan. When the bus reached the Sollapur gate on its second trip the 1st respondent came in a car from the side of Begur and after alighting there had a talk with Ahmed Jan. Thereafter the bus proceeded towards Sollapur. Then too the bus was made to stop at Gangammanahalli and there the people in the bus got down. The bus remained there till the persons who got down there returned to that spot after voting. The bus then took them back to Gowrapur which was reached at 2 P.M. Thereafter the said Ahmed Jan, who drove the bus himself, conveyed in it 35 persons who were mostly women from Gowrapur to Sollapur to enable them to vote there. He, P.W. 92, also went in the bus on that occasion also. This bus went and stopped this time near the polling booth. The Patel of Gowrapur, P.W. 24, then came near the bus and issued identification chits to passengers who were in the bus. Thereafter the passengers went and voted and they were brought back in the same bus to Gowrapur. The bus thereafter was driven again for the last time that afternoon by the said Ahmed Jan, and this time it conveyed 40 passengers to Sollapur. This time too the bus went as far as the polling booth and then too the Patel P.W. 24 came to the bus and issued identification slips to the passengers who were sitting in it. Thereafter those passengers, after they voted, were brought back in the bus to Gowrapur. When the bus made the second trip there were in it Hanumanna and Marulappa who were asking the passengers in it to vote for the 1st respondent.

(c) That the evidence of the said P.W. 92 finds corroborate P.W. 24. I
in the testimony of the other witness is clear from the re ome to Sollapur
P.W. 1, who was the Presiding Officer in the polling booth at Sollapur. P.W. 27 w
on that date, states that the said bus came in the afternoon Gowrapur states
2 P.M. with voters and stopped at some distance from the booth, and two in the af
thereafter the voters came directly to the polling booth and made three trips in
He further states that the same bus came for the second time the fact that in
that afternoon by about closing time with passengers and stopped Returning Officer
the same place and thereafter the passengers got themselves identified between Gowrap
fied, took the voting papers and voted. He definitely states that error by stating i
each of those two occasions there were about 20 passengers. He states that th
bus. The Daffedar P.W.2, who was on duty near the polling bo go by that bus
states that the said bus came twice near the polling booth on while he was goin
afternoon and the bus, which had 30 or 40 seats, had passengers at 11 A.M. and st
its full capacity on the two occasions in which it came there. Asked its driver
than that he says that the said bus had two placards, one on old him that he
right side and the other on the hind portion, having the sym votes in the boo
which was a hut. The fact that it bore on it the symbol of a states that the
leads to the inference that it was being used for the election pur Gowrapur to So
of the 1st respondent. It also leads to the irresistible inference both the occasion
as the said Ahmed Jan was taking voters in this bus having the 5, 28 and 86 co
respondent's symbol of a hut, he was actually canvassing for the voters in the n
respondent. P.W. 24, who is the Patel of Gowrapur and who was Ahmed Jan had
duty near the polling booth, also bears out the testimony of from Gowrapur
aforesaid witnesses. He states that on each of the occasions walla so that the
the bus came there that afternoon the said Ahmed Jan took him e was bringing
the bus and got identification slips issued to the passengers who and 24 did not
seated in it. He definitely states that there were in that bus morning and st
afternoon on the first occasion when it came there 30 or 35 pas disbelieve all th
gers and on the second occasion 35 passengers and that at about f P.W. 92 and
or 11-30 A.M. the 1st respondent came and asked him to is hat day in brin
identification slips to Muslims who had come to vote there. He the 1st respond
had seen the said bus carrying the placards having the 1st resp estimony of P.
dent's symbol of a hut. P.W. 25, who is a resident of Gowrap bundant evider
states that he went from Gowrapur by the said H.I.H. bus to g (d) The
his vote at about 11 A.M. or 11-30 A.M. on 4th January 1952, confirms the or
P.W. 92 came and asked him to go in this H.I.H. bus to Sollapur Ex-C (1) and C
vote, that there were in this bus 30 or 35 persons including him and Exs-D1 and
and that the bus was made to stop at Gangammanahalla register Ex-D o
distance of three furlongs from the polling booth and there he Police Inspecto
others got down from the bus and went walking to the booth, Tarikere and A
after voting they all returned by that bus to Gowrapur. Said bus had co
P.W. 25, also states that the 1st respondent had come by cars per Ex-F1 in
Sollapur on that date at about 11 A.M. or 11-30 A.M. He also confirm the
confirms the evidence of P.W. 92 that when the bus came to Sol (e) The
pur gate on its second trip the 1st respondent who came in a said H.I.H. bus
from Begur side and alighted there spoke to the said Ahmed J heir evidence
before the bus proceeded to Gangammanahalla, and also of ions of sub-sect

Patel P.W. 24. P.W. 26 states that some of the voters who had come to Sollapur to vote told him that they had come by the H.I.H. bus. P.W. 27 who is a Chairman of the Village Panchayet of Gowrapur states that the said bus did three trips in the morning and two in the afternoon. His evidence to the effect that the bus did three trips in the morning is not correct and is evidently due to the fact that in the complaint Ex-DDD. given by him to the Returning Officer he has stated that the bus did five trips that day between Gowrapur and Sollapur, and later on has corrected his error by stating in the mahazar Ex-IV (*b*) that it did only four trips. He states that the owner of the H.I.H. bus sent words to all of them to go by that bus to record votes at Sollapur. P.W. 28 states that while he was going near Gangammanahalla the said H.I.H. bus came at 11 A.M. and stopped near Gangammanahalla and that when he asked its driver Manjiah why the bus had come to Sollapur; he told him that he and others had come to Sollapur to record their votes in the booth there. P.W. 86 a resident of Gowrapur also states that the said bus made two trips in the morning from Gowrapur to Sollapur and that as he could not secure a seat on both the occasions he did not go to Sollapur to vote. These P.Ws. 25. 28 and 86 confirm the evidence of P.W. 92 that the bus brought voters in the morning also to Sollapur twice. Because the said Ahmed Jan had taken permit for making two trips on that day from Gowrapur to Sollapur the bus was stopped at Gangammanahalla so that the Officers in the polling booth might not know that he was bringing passengers by bus. It is for this reason P.Ws. 1, 2 and 24 did not see the bus coming to Gangammanahalla in the morning and stopping there. There is absolutely no reason to disbelieve all these witnesses. They fully support the testimony of P.W. 92 and establish beyond doubt that the bus was engaged that day in bringing voters from Gowrapur to Sollapur to vote for the 1st respondent whose symbol of a hut it carried. Even if the testimony of P.W. 92 is not taken into account, still there is abundant evidence to establish this fact.

(*d*) The documentary evidence adduced by the petitioner confirms the oral evidence of the aforesaid witnesses. The entry Ex-C (1) and C (2) in the motor check register Ex-C of Ajjampur and Exs-D1 and D2 which are the entries in the motor check register Ex-D of Tarikere for 4th January 1952, as stated by the Police Inspector P.W. 4, show that the said bus passed through Tarikere and Ajjampur on that date. As stated by P.W. 5, the said bus had come to Antharaghatta on 4th January 1952 only once as per Ex-F1 in Ex-F. Ex-DDD and Ex-IV (*b*) already referred to also confirm the oral evidence of the witnesses.

(*e*) The 1st respondent's witnesses 5 and 11 admit that the said H.I.H. bus brought voters that day from Gowrapur to Sollapur. Their evidence by itself is sufficient to show that as per the provisions of sub-section (6) of section 123 read with section 124 of the

Act the said Ahmed Jan has committed minor corrupt practice in bringing the bus in contravention of the provisions of sub-section (6). They falsely state that the said bus did only two trips in the afternoon and that on each occasion it brought only 5 or 6 voters. Their evidence shows that they have been tutored to speak in support of the 1st respondent.

(*f*) There is, thus, no doubt, that the said bus of Ahmed Jan conveyed voters from Gowrapur to Sollapur on 4th January 1952 to enable them to vote there obviously for the 1st respondent whose symbol the bus carried.

(*g*) The next point for consideration is whether the 1st respondent hired the said bus for the said purpose that day as alleged in para 8 (*a*) of the election petition and also in para 1 of the list of particulars. There is no direct evidence on the side of the petitioner to prove that the 1st respondent hired the said bus for the said purpose.

(*h*) If the 1st respondent has not hired the bus from Ahmed Jan for the said purpose, the next point for consideration is whether he (the 1st respondent) has procured the bus through the said Ahmed Jan as his agent for his election purpose. As the said Ahmed Jan conveyed voters in his aforesaid bus having the 1st respondent's symbol of a hut as shown above, four times to and from the polling station at Sollapur for carrying voters and identified the voters before the Patel P.W. 24 who issued identification slips to them, and as the 1st respondent, though he saw him doing so, did not disassociate himself from his acts done on his behalf, Ahmed Jan, having regard to the law applicable to Elections, must be deemed to be his agent as rightly contended by the petitioner. A person who provided conveyance for the voters and canvassed and did certain other things for the candidate was held to be an agent. (*Vide* H. S. Doabia, *Law of Elections and Election Petitions* at page 134). A person who was found to have canvassed for the respondent and to have led voters to and identified them at the polling booth was held to be an agent. (*Vide*: Jagathnarayan, *Reports on Elections Petitions*, Vol. II, page 10). Frazer in his Law of Parliamentary Elections, 3rd Edition, page 73, observes as regards agency in Election Law as follows :—

"With regard to Election Law, the matter goes a great deal further, because the number of persons are employed for the purpose of promoting an election who are not only not authorized to do corrupt acts but who are expressly enjoined to abstain from doing so. Nevertheless, the law says that if a man chooses to allow a number of people to go about canvassing for him, to issue placards to form a committee for his election, and to do things of the sort he must, to use a colloquial expression, take the bad with the good He cannot avail himself of these peoples' acts for the purpose o promoting his election and then turn his back or sit quietly by and let them corrupt the constituency." In his book "The Indian

Candidate and Returning Officer" at page 57, Hammond has observed as follows: "In the ordinary sense of the word, a man cannot easily make another his agent without having his eyes fully open to what he is doing. But he may create an agent in the election sense of the word without being conscious of what is being done and, in fact, in such a manner that when the person is ultimately decided to be his agent nobody is more astonished than himself." The term "agent" in Election Law has a wide significance. No authorisation or declaration in writing is necessary and agency has to be inferred from the circumstances and conduct of parties. A Tribunal has full power to hold any person as the agent of a particular candidate after considering the facts and circumstances. The Election Law is harsh, hard and stringent as far as the creation of agency is concerned. Agency in Election Law is not the relationship of principal and agent but is more akin to the relationship of master and servant. It is recognised both in England and in India that by Election Law the doctrine of agency is carried farther than in criminal or civil cases. The fact of agency may be established by circumstances arising out of general features of the case, the conduct and connection of the parties, the subsequent recognition of the acts of the supposed agent or at least an absence of disavowal of such acts. There are several circumstances in this case from which such an inference of agency can be drawn. The said Ahmed Jan was not a stranger to the first respondent. The first respondent has admitted in his evidence that he has been a member of the Traffic Board for the past three or four years. As such member he knows intimately the said Ahmed Jan and Dr. Ghouse who are the proprietors respectively of the H.I.H. and National Bus Services. As stated by P.W. 21, who was once a partner of the said National Bus Service, the said Dr. Ghouse has entered into an agreement with Imam Hussain, the father of Ahmed Jan, and transferred the control of the said National Bus service to the said Imam Hussain. Ex-CCCC is a copy of the said agreement, as stated by P.W. 66, from Sub-Registrar's Office. P.W. 92 has admitted that the said Dr. Ghouse and Ahmed Jan are very intimate friends. There is also business relationship between them as stated above. The evidence of the first respondent as regards his relation with Dr. Ghouse and Ahmed Jan is halting and evasive to avoid the inference that he is on intimate terms with them. P.W. 86 states that the said Dr. Ghouse and Ahmed Jan had come to Gowrapur with the first respondent about three or four days prior to the election for canvassing in connection with the candidature of the first respondent. P.W. 85 states that at the last Municipal elections at Ajjampur the first respondent came to Ajjampur and asked people to vote for K.M.P. Party candidates of whom Dr. Ghouse was one. P.W. 21 has also sworn to the same effect. All these circumstances show that the first respondent has been on intimate terms with the said Ahmed Jan and Dr. Ghouse. Because they have been on intimate terms as stated by P.Ws. 86 and 104,

the said Ahmed Jan and his people gave him (the first respondent) a tea party in his house in honour of his success at the election. Is it any wonder, therefore, if the said Ahmed Jan, giving up the profits which he would have otherwise obtained by running his bus on the regular line, engaged the bus exclusively for carrying voters from Gowrapur to Sollapur on the election day for promoting the election prospects of the first respondent? Because the bus had been devoted exclusively for this purpose it carried on it the placards containing the symbol of a hut. As the first respondent as shown above, had come to Sollapur on the election day while this bus was conveying voters in it, and as he had a talk with the said Ahmed Jan near the Sollapur gate as shown above, if he objected then to the said Ahmed Jan carrying voters in this bus which bore his symbol, he should have disassociated from his actions. But he has not disavowed what Ahmed Jan did that day on his behalf and for his benefit. The aforesaid circumstances brought to light by the unimpeachable testimony of the aforesaid witnesses show that what the said Ahmed Jan did that day was virtually canvassing work for the first respondent. For all these reasons, we are led to the conviction that the said Ahmed Jan was acting on the election day as the first respondent's agent and, hence, the first respondent must be deemed to have procured the bus for the said purpose through his agent the said Ahmed Jan, and, hence, he is liable for this corrupt practice.

(*i*) Even if the said Ahmed Jan was not an agent of the first respondent, if he has conveyed voters from Gowrapur to Sollapur in a bus that carried the first respondent's election symbol with the connivance of the 1st respondent, the latter is guilty of this corrupt practice in question. The circumstances referred to above also lead to the irresistible inference that the 1st respondent has connived at these acts of the said Ahmed Jan. A person connives at the act of another if, knowing his act, he does not disassociate himself from it. (Jagathnarayan's Law of Election and Election Petitions at page 489). The 1st respondent though he knew what Ahmed Jan was doing, did not disassociate himself from it. Ramanna R.W. 11, who was the polling agent at Sollapur, of the 1st respondent as admitted by him, has also connived at the said act of Ahmed Jan on the ground as stated by P.W. (1) that he had a permit to bring the bus to Sollapur.

(*j*) The act of the said Ahmed Jan in taking electors on that day in his bus having the election symbol of the 1st respondent not once but four times from Gowrapur to Sollapur for voting in the said booth even if the 1st respondent had nothing to do with that act, amounts to a minor corrupt practice under section 124 read with sub-section (6) of section 123 of the Act, and if this minor corrupt practice materially affects the result of election, as per clause (*a*) of sub-section (2) of Section 100 of the Act, then as per clause (*c*) of the said sub-section, the election of the 1st respondent should be declared to be void. A perusal of sub-section (6) of

section 123 of the Act shows that as per its provisions *no elector other than the candidate himself or the members of his family or his agent can be conveyed in any vehicle to and from any polling station* The aforesaid provision of law contained in sub-section (6) is subject to two provisos: Under the first one, several voters can hire and go to and from a polling station in a vehicle at their joint cost '*provided it is not propelled by mechanical power.* Under the second proviso, an elector can make use of a *public transport vehicle at his own cost* for the purpose of going to and from a polling station. If the act falls under any of the two provisos, it is not a corrupt practice. The aforesaid act of the said Ahmed Jan in taking not less than 20 persons at a time in the motor bus from Gowrapur to the Polling booth at Sollapur, as stated by P.Ws. 1, 2 and 24, comes within the mischief of the said sub-section (6) as he was not a candidate and as the people whom he was taking in the bus were not the members of his family. It certainly does not come within the purview of the 1st proviso as the bus was propelled by mechanical power and as the people who travelled in it to and from the polling station did so without paying anything towards fare. It certainly does not come within the purview of the second proviso also as the said bus was not being run as a public transport vehicle between Gowrapur and Sollapur on that day as is clear from Ex-A (1) and as several persons besides the said Ahmed Jan travelled in it to the polling station free of cost. It is thus clear that the said act of Ahmed Jan at least involves a minor corrupt practice referred to in section 124 of the Act. As per section 2 clause (*c*) "corrupt practice" means any of the practices specified in section 123 or section 124. As per clause (*a*) sub-section (2) of section 100, if the election of a returned candidate has been procured or induced or the result of election has been materially affected by any corrupt or illegal practice, then this Tribunal should declare the election of the returned candidate to be void. Hence, it is necessary to consider whether this minor corrupt practice has materially affected the result of election. As shown above, the 1st respondent has been returned to the Legislative Assembly by a narrow majority of 34 votes as against the petitioner. The said Ahmed Jan has conveyed in his bus on the afternoon of the election day according to the evidence of the Police Daffedar P.W. 22 and the Patel of Gowrapura P.W. 24, not less than 30 persons on each of its two trips. In all, the said Ahmed Jan has conveyed in the said bus which bore the symbol of the 1st respondent not less than 60 passengers. As the said Ahmed Jan had conveyed them in the said bus having the symbol of the 1st respondent, it is reasonable to presume that all these persons must have voted in favour of the 1st respondent in whom, as shown above, the said Ahmed Jan who was virtually his canvassing agent was interested. But for the above facilities afforded to them by the said Ahmed Jan, it is quite likely they would not have gone to the polling booth to vote for the 1st respondent. Ex-TT. 20 shows that

47 Muslim women have voted. As stated by P.W. 5, the Muslim women came to the polling booth from Gowrapur by H.I.H. bus only. If the said Ahmed Jan had not conveyed them in his bus, they would not have voted at all. Hence, at least if they had not voted, the 1st respondent would not have obtained a majority of votes. For the reasons stated above, if the 1st respondent is not guilty of a major corrupt practice by procuring the said bus through the said Ahmed Jan as his agent, the said act of Ahmed Jan in contravention of sub-section (6) of section 123 read with section 124 of the Act amounts to a minor corrupt practice, and as it materially affects the result of election, the election of the 1st respondent is void. The 1st respondent has not let in any evidence, under Sub-section (3) of section 100 to prove any of the conditions referred to in it, for the purpose of showing that he is not guilty of this corrupt practice. It is very strange why he has not chosen to examine the said Ahmed Jan and get his explanation. His non-examination justifies an adverse inference that if he had been examined he would not have supported the 1st respondent's case.

(*k*) In the result, on the 5th issue we hold that the 1st respondent did procure the said H.I.H. service bus through Ahmed Jan, his agent, for conveying his voters to and from the polling station at Sollapur as per para 1 of the list of particulars and thereby committed the major corrupt practice referred to in sub-section (6) of section 123 which renders the election of the 1st respondent void, and that even if the 1st respondent did not procure through the said Ahmed Jan as his agent, the said bus, the act of Ahmed Jan in conveying to and from the polling booth at Sollapur the voters in his bus bearing the 1st respondent's election symbol on the election day, in contravention of the provisions of sub-section (6) of section 123 of the Act, amounts to a minor corrupt practice, and as this minor corrupt practice has materially affected the result of election, the election of the returned candidate, namely, the 1st respondent is void at least for this reason.

24. We shall next proceed to consider and adjudicate on the sixth issue which relates to the major corrupt practice referred to in sub-section (8) of section 123 of the Act. This major corrupt practice is committed if a candidate or his agent or any other person with the connivance of the candidate or his agent obtains or procures any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person. It is alleged in para 8 (*b*) and in the connected para 2 of the list of particulars that the 1st respondent took the assistance of a number of Government servants, of whom the principal ones were Duggappa, his son-in law who is an employee in the Bhadravathi Iron and Steel Works, and C. Parameswarappa, the Patel of Basavapura, to further his election prospects. Though the petitioner has alleged that the 1st respondent took the assistance of a number

of Government servants, he has adduced evidence to show that the 1st respondent took the assistance only of the said Duggappa and the said Patel C. Parameswarappa for his success in the election contest.

(*a*) We shall first determine whether the 1st respondent committed this alleged corrupt practice by utilising the services of the said Duggappa. To constitute the said corrupt practice the person whose services are utilised should be a person serving under the Government of India or the Mysore Government. The said Duggappa admittedly at the time of the election was only an employee of the Bhadravathi Iron and Steel Works though the said Bhadravathi Iron and Steel Works are financed by the Government, it cannot be said, as rightly contended by the learned counsel for the 1st respondent, that he is a person serving under the Government of the State. As he is not serving under the Government of the State, the 1st respondent, even if he had utilised the services of the said Duggappa for his election campaign, has not committed the alleged corrupt practice. In the next place, there is also no convincing evidence at all to prove that the said Duggappa took part in furthering the election prospects of the 1st respondent. P.W. 61, who states that he saw the said Duggappa canvassing for the 1st respondent near the polling booth at Kemmanagundi on the election day, is not a reliable witness. He states that he knew that he had to vote in the polling booth at Thanigebylu as the Patel of his village had given to him a chit to that effect 15 days prior to the election. Hence, his evidence that he went to the polling booth at Kemmanagundi on the election day under the impression that he had to vote there is false. P.W. 64, who is a Revenue Inspector, states that he and the said Duggappa slept in a room in the official quarters of the Bhadravati Iron and Steel Works, of which he was a probationer, on the night of 3rd January 1952. He knows nothing about the said Duggappa having canvassed for the 1st respondent near the polling booth on the next day, as he states that he did not see Duggappa again there. His evidence, therefore, does not also help the petitioner to prove this corrupt practice. P.W. 65 states that on the date of election he saw Duggappa and Shankara Rao canvassing on behalf of the 1st respondent at the polling station at Kemmanagundi. His evidence shows that he is interested in the petitioner as the latter takes his lorry for hire to convey timber and that every year on the average he gets from him (petitioner) 2 or 3 hundred rupees. It is not difficult for the petitioner, therefore to induce such a witness to support his case. If the said Duggappa canvassed for the 1st respondent that day near the polling booth at Kemmanagundi, the Revenue Inspector, who remained the whole of the day there would not have failed to see him canvassing near the polling booth there. No reliance can therefore be placed on the evidence of P.W. 65 also. P.W. 10 has produced the attendance register having entries Exs-K1 and K2. the leave application Ex-L

(P.W. 84) was a party to the decision which curtailed the rights and privileges of patels and shanbhogues; why he had come to ask the people to vote for the Congress after having moved a no-confidence motion against the Government and why he was supporting the congress Government which had squandered 20 crores of rupees, and why he should not make room for the K.M.P. party. He then answered all those questions and asked the said C. Parameswarappa whether he belonged to the K.M.P. party. He admitted that he and others that had questioned him belonged to the K.M.P. party. He (P.W. 84) is the President of the District Board, Mysore, and a prominent member of the Congress party. His evidence as regards the said facts has been fully corroborated by P.W. 20, who states that one of the questions put by the persons including Channapur Parameswarappa to him (P.W. 84) was why votes should not be given to the 1st respondent who was equally competent, P.W. 21 and P.W. 30. There is absolutely no reason to disbelieve their evidence. P.W. 30 has not even been cross-examined.

(iii) That the said Channapur Patel Parameswarappa being a member of the K.M.P. party had espoused the cause of the 1st respondent and considerably helped him by doing canvassing work and thus promoted his prospects at the election is abundantly clear from the testimony of P.W. 52, a resident of Channapur, who is a respectable witness P.W. 56, a resident of Baggavalli, P.W. 51 also a resident of Baggavalli, P.W. 87 also a resident of Baggavalli, P.W. 88 Patel of Kalasettyhalli, and P.W. 89 also a resident of Baggavalli. They have all sworn that the said Channapur Parameswarappa, Patel of Basavapura, had come to their aforesaid villages prior to the election on 4th January 1952 to ask people of those villages to vote for the 1st respondent whose symbol was a hut and who belonged to the K.M.P. party, and that even on 4th January 1952, when the election took place, he canvassed for securing votes near the polling booth at Baggavalli. The said P.W. 54 further states that after doing election propaganda work on behalf of the 1st respondent the said C. Parameswarappa was moving about in a car of the 1st respondent and distributing handbills having the symbol of the 1st respondent. P.Ws. 56, 87 and 89 further state that the 1st respondent had come with the said C. Parameswarappa to Baggavalli about 15 days prior to the election to carry on election

propaganda and that then the said C. Parameswarappa asked people to definitely vote for the 1st respondent. From their evidence it is clear beyond possibility of doubt that the 1st respondent has obtained the assistance of C. Parameswarappa to further his election prospects. There is absolutely no reason to disbelieve the testimony of the aforesaid witnesses regarding these facts, especially that of the said P.Ws. 56, 57, 87 and 88 whose evidence has not been shaken in the least by cross-examination and who have absolutely no reason to swear against the 1st respondent and in favour of the petitioner.

(iv) The conduct of the said C. Parameswarappa subsequent to the success of the 1st respondent at the election also shows that he must have warmly espoused the cause of the 1st respondent at the election. P.W. 29 and P.W. 35 state that on a certain day 2 or 3 days after the 1st respondent was declared as a successful candidate, at about 5 or 5-30 P.M. the 1st respondent was taken in a procession at Ajjampur in a car from the side of the Congress House to the fort and this procession was headed by the said Channapur Patel Parameswarappa and Deveerappa who wore garlands. P.Ws. 46, 47 and 63 have stated that after the 1st respondent's success he was taken in procession in a car in Tarikere and in that car behind him were seated Sabjusab, Puttiah and the said Channapur Patel Parameswarappa. P.W. 52 swears that in Channapura, after the 1st respondent's success, there was a procession of the 1st respondent in a bullock cart with band and music and after that procession a dinner was given by the said Patel C. Parameswarappa in his house and that many people from Tarikere attended this dinner. There is no reason to disbelieve the evidence of these witnesses also. The 1st respondent, who stated in his examination in chief, that after his success at the election there was no procession in which he participated, was forced to admit when he was confronted with Ex-HHHHH, the Tainadu Newspaper copy that he was taken in processions at Tarikere and Ajjampur. There is nothing in their evidence to show that they are interested in favour of the petitioner or hostile to the 1st respondent. Because the said C. Parameswarappa had taken a prominent part in bringing about the success of the 1st respondent, he has also taken part in the jubilation that followed the success.

(v) P.W. 18. a cycle-shop keeper of Ajjampur, has sworn that between 9th December 1951 and 4th January 1952

C. Parameswarappa, Devendrappa and Rajasekharappa took cycles from his shop for purposes of the 1st respondent's election propaganda by affixing their signatures to Ex-FF(1) on behalf of the 1st respondent. He definitely states that the said Channapur Parameswarappa and Devendrappa took cycles on hire from him.

(vi) P.W. 63 has stated that he worked for the 1st respondent at the time of the last election along with several others, and that after the success of the 1st respondent, about 60 or 70 workers including himself, who had worked on behalf of the 1st respondent wanted to give an entertainment to the 1st respondent, and in that connection circulated the subscription list Ex-BBBB, and that this Ex-BBBB contains the names of all the persons who had worked for the 1st respondent for doing canvassing work, and that it bears also his signature. The name of the said Channapur Parameswarappa also finds a place in Ex-BBBB and the said C. Parameswarappa has affixed his signature against his name in it. The said signature is identical in all respects with the signature purporting to be that of the said Channapur Parameswarappa affixed against Ex-FFF(1). Ex-BBBB which had come into existence long before this dispute arose, thus establishes beyond possibility of doubt that the said C. Parameswarappa did canvassing work on behalf of the 1st respondent.

(*d*) Thus, the oral and documentary evidence adduced on the side of the petitioner proves beyond doubt that the 1st respondent procured the assistance of the said Channapur Parameswarappa, who as Patel of Basavapur was serving under the Government, for the furtherance of his election prospects, and thereby committed the major corrupt practice referred to in sub-section (8) of section 123, and, hence the election of the 1st respondent is void, the absence of any evidence on his side to prove any of the conditions (*a*) to (*d*) referred to in sub-section (3) of section 100 of the Act. Having regard to the large volume of evidence adduced by the petitioner to prove this corrupt practice, it is very strange why the 1st respondent did not examine the said C. Parameswarappa. His non-examination justifies an adverse inference that if he had been examined he would not have supported the 1st respondent's case regarding this corrupt practice.

(*e*) In the result, for the reasons stated above, we hold on the 6th issue that the 1st respondent did take the assistance of Channapur Patel Parameswarappa, who was in the service under the Government of the State, to further the prospects of his election as alleged in para 2 of the list of particulars and thereby committed the alleged major corrupt practice.

25. We shall next take up for consideration and decision the 7th issue which relates to the corrupt practice of undue influence referred to in sub-section (2) of section 123 of the Act. The averment relating to this corrupt practice is contained in para 8 (*c*) of the election petition and para 3 of the annexed list of particulars. The law relating to undue influence is contained in the said sub-section (2). As per this section, undue influence is any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of electoral right, and as per proviso (ii), which is important for the purpose of this issue, inducement or attempt to induce a candidate or an elector to believe that he or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, should be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this sub-section. The point for consideration as regards this alleged corrupt practice is whether the 1st respondent has unduly influenced the electorate by inducing or attempting to induce them, at least the Hindu portion of it, to believe that they would be objects of divine displeasure or spiritual censure if they do not vote in his favour. In this connection, it is necessary to determine whether the allegations made in para 8(*c*) of the election petition and para 3 of the list of particulars have been substantiated by the petitioner. In them the petitioner has alleged (1) that the 1st respondent made systematic appeals to voters through the handbills not to vote for the petitioner on the ground that he belongs to an organisation which was interfering with Hindu religion, temples, etc. (2) that the 1st respondent through his agents influenced several voters to vote for himself and not for the petitioner by making frantic appeals using the name of Manjiah Heggade of Dharmasthala, exploiting the feelings of reverence of several Hindu voters to the said gentleman and the seal of worship to which he belonged, and (3) that these appeals were made through loud-speakers also.

(*a*) In proof of the aforesaid allegations the petitioner has examined P.Ws. 42, 43, 45, 46 and 103. These witnessess have not at all in their evidence substantiated the aforesaid allegations made in the election petition and in the list of particulars. They have not stated in their evidence that the 1st respondent or his agents asked people not to vote to the petitioner on pain of incurring the displeasure of the Deity Manjanathaswamy or the spiritual censure of Manjiah Heggade. They have stated that some days before the election, one Siddappa Setty came in a van fitted with loudspeakers to Lakkavalli and read the contents of a leaflet which was similar to Ex-KKK and distributed such leaflets to the public at large. They are not in a position to state what was said by the said Siddappa Setty with reference to the said Manjiah Heggade and Manjanatha Devaru while carrying on propaganda. They are not in

a position also to state if the contents of the leaflets that were distributed were exactly those contained in Ex-KKK. These witnesses, who have spoken to Ex-KKK, are not disinterested witnesses. P.Ws. 43, 45 and 103 have money dealings with the Land Mortgage Bank of which the petitioner is the President. As Ex-KKK does not contain anything that would attract the provisions of law quoted above and render the 1st respondent liable for the corrupt practice in question, the bare evidence of these witnesses that the leaflets like Ex-KKK were then distributed is not sufficient to prove this corrupt practice. It is not also proved that Ex-KKK contains the policy and programme of the K.M.P. Party. R.W.1, who belongs to the K.M.P. Party, and who was its Vice-President, and as such is expected to know the policy and programme of his party, states that his party does not subscribe to the views expressed in Ex-KKK and that to his knowledge no member of the K.M.P. Party used the leaflets like Ex-KKK for carrying on propaganda and that he had no occasion to look into the leaflets like Ex-KKK. The 1st respondent also states that he or his agents did not get leaflets like Ex-KKK printed and circulated and that the sentiments expressed in it are not appropriate to the K.M.P. Party. The leaflets like Exs-RRRR, SSSS, TTTT and UUUU, which the 1st respondent has got printed for purpose of his election propoganda have not been printed at all in the press at Bhadravati where Ex-KKK was got printed. Ex-KKK also shows that it has been issued from Dharmasthala. Under these circumstances it cannot be said that there is any reliable evidence to connect the election propaganda carried on by the 1st respondent with Ex-KKK. Thus the aforesaid allegations made in the election petition and the list of particulars have not been proved at all and it is extremely doubtful if leaflets having the matter contained in Ex-KKK were circulated by the K.M.P. Party at all at the time of carrying on election propaganda in Tarikere Constituency.

(*b*) In the next place, Ex-KKK purports to be a printed copy of a statement of Manjiah Heggade addressed from Dharmasthala to the public at the time of the last election which had appeared in a newspaper entitled "Vicharavani". This statement only emphasises the necessity to form a strong opposition to the Congress Party, and the public were requested to cast their votes in favour of only proper and competent persons. No mention is made in it of the K.M.P. Party at all. No frantic appeal is made in it in the name of Manjanatha Devaru or in the name of Manjiah Heggade. Nor does it contain any appeal to the public of the Tarikere Constituency to vote only in favour of the 1st Respondent and not in favour of the petitioner on pain of incurring the displeasure of the deity Manjanathaswamy or the spiritual censure of Manjiah Heggade. It is only a political leaflet and it is not at all calculated to produce the effect referred to in the said clause (ii) of the proviso to sub-section (2) of section 123 of the Act.

(c) The petitioner has thus failed to prove the seventh issue and this issue is, therefore, decided by us in the negative against the petitioner.

26. The next issue for decision is the eighth issue. This issue relates to the corrupt practice of bribery referred to in sub-clause (i) of section 123 of the Act. The corrupt practice of bribery is committed as per this sub-section, if a candidate or his agent or any other person with the connivance of a candidate or his agent makes a gift, offer or promise of any gratification to any person whatsoever with the object, directly or indirectly, of inducing, for example, an elector to vote for the candidate. The averment relating to this corrupt practice is contained in para 8(*d*) of the petition and the particulars of it are given in para 4 of the list of particulars. It is alleged in para 4 of the list of particulars that on 28th December 1951 at Abbinaholalu in Shivani Hobli, the 1st respondent arranged for a grand dinner in his friend's house and promises were taken after feeding from several of the voters. It is further alleged in this para that on 2nd January 1952 in Menasinakayi Hosahalli in his friend's house, the 1st respondent gave another dinner party where also similar promises were taken. To substantiate this charge of corrupt practice the petitioner has to prove all the aforesaid allegations.

(*a*) There is absolutely no evidence to prove the alleged entertainment at Menasinakayi Hosahalli on 2nd January 1952 given by the 1st respondent in his friend's house to extract promises from voters who had come and partaken of the dinner there.

(*b*) To prove the entertainment on 28th December 1951 said to have taken place at Abbinaholalu, the petitioner examined P.W. 101. As stated by him (P.W. 101) about 15 days prior to the election there was a propaganda meeting at Katinagere on behalf of the K.M.P. Party at which Sri L. Siddappa R.W. 1, Sri Mohamed Imam, the 1st respondent and one Sabju addressed. After that meeting was over, Deveerappa took him and others to Abbinaholalu and gave a sumptuous dinner to about 40 or 50 persons who had come then in the house of Marulasiddiah. He (P.W. 101) also partook of the dinner that was served there. After dinner they were asked to go to the Panchayat Hall. There, Sriyuths L. Siddappa (R.W. 1), J. Mohamed Imam and others asked them to vote for the K.M.P. Party. No other witnesses have spoken to this alleged entertainment at Abbinaholalu. The corrupt practice involved in the alleged entertainment at Abbinaholalu is known as 'treating'. 'Treating' may be defined as a corrupt practice involved in the giving of meat or entertainment to persons in order to influence their votes. The corrupt intention must be proved. It may also be defined as "getting at the voters through their mouths and through their stomachs." The evidence which is necessary to prove a criminal charge must be produced to prove this corrupt practice. It is alleged in para 4 of the list of particulars that after feeding, promises were

taken from several of the voters. The names of the persons from whom such promises were taken have not been given in this para of the list. P.W. 10 also does not state a word about the 1st respondent having taken promises from several of the guests at the dinner in that house to vote for him. His evidence is also discrepant. In his examination-in-chief he states that the said dinner was given in the house of Marulegowda. But in his cross-examination he states that the dinner was given in the house of Deveerappa. It is significant to note that he (P.W. 101) does not state that any one was asked to vote for the K.M.P. Party in the said house where the alleged dinner was given. He states that after dinner there was a meeting in the Panchayat Hall when Sri L. Siddappa R.W. 1 and others explained the ideals of the K.M.P. Party and they were asked to vote if they were satisfied with the ideals of the K.M.P. Party. It is thus clear that the meeting at the Panchayat Hall, if really there was any such meeting at all, had nothing to do with the dinner in that house. Hence, the corrupt practice has not been proved at all. The discrepancy in the evidence of P.W. 101, adverted to above, leads one to doubt if he was present at all at the alleged dinner.

(*c*) As against the testimony of P.W. 101 there is the evidence of R.W. 1. As stated by him, after the meeting in Katinere, Deveerappa, who is his relative, invited him for dinner in his house at Abbinaholalu, and hence, with his companions he went to his house for taking food. It was a private dinner. After they took dinner they went to Ajjampur. They did not hold any meeting after dinner in the V. P. Hall of Katinere as they had completed their propaganda before they went to Abbinaholalu for taking dinner. He swears that only ten persons were fed at the said dinner. He is a respectable witness, and there is no reason to disbelieve his evidence regarding this matter of controversy. The 1st respondent also swears that the allegations made in para 4 regarding the dinner at Abbinaholalu are false. He thus confirms the truth of the evidence of R.W. 1.

(*d*) Thus, the alleged corrupt practice of treating has not been proved at all. The 8th issue relating to this controversy should also be held against petitioner. We, therefore, decide the 8th issue in the negative.

27. The next issue for the decision is the 9th issue which relates to the alleged disturbance caused by the people of the K.M.P. Party when the Congress Party held its meetings, especially at Ajjampur on 20th December 1951, as per the particulars set out in para 5 of the list of particulars. Having regard to the provisions of sections 123 and 124 of the Act, such alleged disturbances at political meetings do not constitute a corrupt practice at all. This issue is quite irrelevant therefore, for the case. P.Ws. 4, 7, 22, 23, 35 and 42 have been examined to prove the alleged disturbance in Ajjampur caused by the K.M.P. Party in the morning at about 10·30 A.M., on 20th December 1951 when Sri Hanumanthiah, the then Congress

President, came to address a meeting in Kiralamma's Temple there. Their evidence regarding the alleged disturbance there is very meagre and vague. Their evidence shows that because the people of the K.M.P. Party came with vans having loud speakers to carry on counter propaganda there was a slight disturbance then. It is also seen from their evidence that the Congress Party held their meeting in the evening when Sri Hanumanthiah addressed the meeting and there was then no disturbance from any one whatsoever. The 9th issue is, therefore, decided by us in the negative.

28. The next issue for decision is the 10th issue and it is based on the allegations made in para 8 (*f*) of the election petition and in para 6 of the list of particulars to the effect that the 1st respondent and his people threatened several of the congress workers to wit. S. V. Naganna Setty P.W. 21, Krishnoji Rao. Siddappa P.W. 23 and others saying that they would inflict injuries on those persons if they took part in working for the petitioner. S. V. Naganna Setty P.W. 21 has not in his evidence borne out these allegations. The only witnesses who have spoken in support of this is Siddappa P.W. 23, the Secretary of the Congress Office at Ajjampur who has produced the copies of complaints Ex-GGG series. He states that in the month of December 1951 while he was in a hotel, G. Thimmiah and Kadappa came and asked him not to vote for the congress candidate and also not to stir out from the house and told him that he would come to trouble if he should disobey their instructions, and that subsequently too they used to threaten him. If they had done, so, we fail to see how the 1st respondent is answerable for what they did. His evidence has not been corroborated at all by any one else. As he was the Secretary of the Congress Organization at Ajjampur, he is interested in the petitioner. If he was molested by them as alleged, he would certainly have sought the protection of the police. No Police Officer has been examined to bear out his evidence. There is thus no satisfactory evidence in proof of the 10th issue, and we decide it against the petitioner.

29. The next issue for decision is the 11th issue. The controversy relating to this issue is also major one in this case and this issue is based on the allegations made in para 8 (*g*) of the election petition read with para 7 of the list of particulars. It is alleged in them that the return of the election expenses which has been marked as Ex-AAA lodged by the 1st respondent with the Returning Officer is false in material particulars. In para 8 of the list of particulars the petitioner has given particulars of the items which the 1st respondent has omitted from the return to keep his expenses very much within the limit of Rs. 5,000. He contends that all the expenses which he has omitted would easily exceed the sanctioned limit of Rs. 5,000.

(*a*) As per section 124, sub-section (4) of the Act, the making of any return of election expenses which is false in any material

particular or the making of a declaration verifying any such return is a minor corrupt practice which would render the election of the first respondent void under section 123 (*a*) and (*c*) of the Act, if it has materially affected the result of election. Section 44 of the Act says that every election agent shall for each election for which he is appointed election agent keep separate and regular books of account and shall enter therein such particulars of expenses in connection with the election as may be prescribed. Rule 111 of the Rules gives the direction to the election agent as to how election expenses should be maintained. As per rule 112, the return of election expenses by the candidate should be in form No. 26.

(*b*) The 1st respondent, as he states in his evidence, had no election agent, and hence, he declared himself to be his agent. As he was his own election agent, he should have maintained accounts as per section 44 of the Act and the rule 111. The account book Ex-XXIV which the 1st respondent has kept for entering the details of the expenses, etc., incurred by him leads one to the inference that all the entries were made on one and the same day in that book and not in the regular course of the transactions which took place in connection with his election campaign, and that he (the 1st respondent) has grossly violated the provisions of section 44 of the Act and the rule 111 by not conforming to its directions in the matter of keeping accounts. In Ex-AAA he has shown that his total election expenses came to Rs. 2,617-9-9.

(*c*) According to the petition, the list of particulars and the evidence adduced on the side of the petitioner, the return of expenses of the 1st respondent is false in respect of the following material items :-

(i) Hire of cars or the money value of the use of cars if taken without payment of hire ;
(ii) Charges for repairing cars and cost of tyres in respect of cars so taken ;
(iii) Petrol charges ;
(iv) Hotel expenses ;
(v) Remuneration paid to his workers and the boarding charges of the drivers of cars engaged by him for the election work ;
(vi) Hire of cycles ; and
(vii) T.B. charges.

(*d*) The first point for determination in this case is whether the 1st respondent had taken for hire or as a loan without charge the cars of others for his election campaign.

(i) P.W. 36, as stated by him, gave his Chevrolet car bearing No. MY 8894 Z to one Ramappa on behalf of the 1st respondent for his election campaign on the 20th December 1951. The car was not in use as its tyres were not in good order and the said Ramappa took it saying that he would purchase tyres for the car and

use it for the election work. The said car was with the said Ramappa for 8 or 10 days, and subsequently he returned it to him. He had sent one Nagappa to drive the car. The said Ramappa himself purchased petrol for the use of the car. The car when it was returned had a new tyre, the value of which was Rs. 210. There is no reason to disbelieve the evidence of this witness. P.Ws. 39, 50 and 63 confirm the truth of his evidence. Even if it is taken that the said car was used for 8 or 10 days and if the money value of the use of this car is approximately fixed at Rs. 20 per day, the total expenses that should have been shown for the use of this car in the return of expenses would be Rs. 370 including the cost of tyre.

(ii) P.W. 37, as stated by him lent his Chevrolet car MY 9692 Z to the 1st respondent for use in connection with his election work about the end of December 1951. The car was then in the workshop. P.W. 36 and the driver on behalf of the 1st respondent both took the car saying that they required it for four days. As the car had no tyres, he purchased two used tyres of a Ford car from a mohammedan for Rs. 210 and fitted them to the car and received from them Rs. 210. The car was taken by them and was returned four or six days thereafter. There is no reason to disbelieve the evidence of P.W. 37. P.Ws. 50 and 63 confirm the truth of his evidence. As the car was used for 4 days, the total value of the use of this car at Rs. 20 per day comes to Rs. 80, and this amount together with Rs. 210, *i.e.*, in all Rs. 290 should have shown in the return of expenses as expenses incurred in respect of this car.

(iii) P.W. 39 states that one Balaji had sent him pomising to give him salary to drive the Ford car No. MY 6527 Z which the 1st respondent had taken from Shimoga to Tarikere. He drove the car on 16th December 1951 from Shimoga to Tarikere and left it near the 1st respondent's house. Thereafter he was moving about in this car in connection with the 1st respondent's election campaign. He definitely states that the car was being used for the election campaign of the 1st respondent and the 1st respondent used to purchase petrol for this car from the Burmah-Shell Petrol Bunk and the people on the side of the 1st respondent used to sign in the bunk book for taking petrol. He drove the car for the 1st respondent for 18 days for his election purposes. The said car was with the said Balaji when it was taken from Shimoga by the 1st

respondent though the 'C' certificate relating to it was in the name of Parameswarappa. He also states that besides the two cars which the 1st respondent owned, he was using for his election campaign a car that had been brought from Chikmagalur, a car that had been brought from Shanthaveri, a car from Koppa. He further states that a muslim was the driver of the Shanthaveri car and Krishna was the driver of the car from Koppa and Nagappa was the driver of the Chikmagalur van. There is no reason to disbelieve the evidence of this witness. P.W. 53 states in his evidence that the said "Thimmiah Sons" of which the 1st respondent is a partner had transactions with his firm from the 1st November 1951 till the end of March 1952 as per Ex.-NNN (1) in Ex.-NNN and that Ex.-PPP is the khatha book of his firm relating to the said period. He states that Ex.-PPP (1) to Ex.-PPP (12) are entries in the day book corresponding to those in the ledger Ex.-NNN (1). Ex.-PPP 2 shows that on 16th December 1951 the 1st respondent has taken a sum of Rs. 225 from this firm for giving it as advance in respect of a taxi taken for election work. The taxi referred to in Ex.-PPP 2 is obviously the said car No. MY 6527 Z which was with the said Balaji and of which the registered owner was Parameswarappa. With a view to get over the entry Ex.-PPP 2 which renders highly probable the evidence of P.W. 39 the 1st respondent has let in evidence of himself and his brother-in-law R.W. 18, which, far from helping him, goes to show to what depth of falsehoods they can descend. From the entry Ex.-PPP 2 it is clear that the 1st respondent himself has personally gone and stated to P.W. 53 that he required the sum of Rs. 225 for payment as advance for a taxi. The 1st respondent would not have gone and so stated if he had not hired a taxi at Shimoga for which he had to pay an advance of Rs. 225. The evidence of P.W. 39 that the said car was taken from Shimoga on 16th December 1951 confirms the entry Ex.-PPP 2. In the course of his evidence the 1st respondent R.W. 19 states that he had asked P.W. 53 to lend him some money about 15 or 20 days prior to the election, that about one or two days thereafter he asked his brother-in-law R.W. 18 to get money from Venkatasastri P.W. 53 and also to tell him that the amount was required to pay as an advance for taxi and also to secure a taxi, and that thereafter his brother-in-law R.W. 18 who had gone to Shimoga returned and gave him Rs. 225 saying that

he could not secure a taxi at Shimoga and pay as advance for that taxi Rs. 225. His brother-in-law R.W. 18 has spoken in support of the aforesaid evidence of the 1st respondent. Ex.-PPP 2, as shown above, belies the evidence of the 1st respondent R.W. 19 and his brother-in-law R.W. 18. P.Ws. 50 and 63 also bear out his evidence regarding this car from Shimoga that was used for the 1st respondent's election campaign. From the evidence of this witness it is clear beyond possibility of doubt that the said car MY 6527 Z was used by the 1st respondent for 18 days. The Motor Check Register Ex.-DDDD produced by P.W. 49 shows that the 1st respondent must have got this car driven by P.W. 39 within the Tarikere Constituency for his election work. The money value of the use of this car for 18 days at the rate of Rs. 20 per day comes to Rs. 360. This item of expenditure is not shown in the 1st respondent's return of expenses.

(iv) As stated by P.W. 48, who is a resident of Kadur, a week prior to the elections on 4th January 1952, the people on the side of the 1st respondent took his car MY 9073 Z for use in connection with the election propoganda to be carried on behalf of the 1st respondent. After election the car was returned to him. The 1st respondent bore the entire expenses of petrol and also the feeding charges of the driver. From his evidence it is clear that the said car No. MY 9073 Z must have been used for the election campaign of the 1st respondent At the rate of Rs. 20 per day, the value of the use of this car for eight days comes to Rs. 160.

(v) As started by P.W. 63, he was in the service of P.W. 54 as his driver of the Morris car MY 6525 Z. His employer P.W. 54 had asked him to drive the said car for doing election convassing work on behalf of the 1st respondent. Hence, the said Morris car was being used for the election work of the 1st respondent and he was moving in this car from village to village to do canvassing work. As the car thereafter required repairs, as directed by the 1st respondent, he took it and left it in Ananda Rao garage, Shimoga. One of the cars of the 1st respondent was also left in the said garage of Ananda Rao at about that time for repairs. At the time of taking the said Morris car from the garage, the bills of which Exs.--W1 and W2 are counterfoils, were made out in the name of the 1st respondent and he has affixed his signatures not only to the original bills but also to the counterfoils Exs.--W1

and W2. He gave the originals of these bills to the 1st respondent. When he affixed his signatures to them the alterations in ink in Ex-W2 (a) were not there. Ananda Rao had sent him to get the spare parts for the said morris car from some Gowder who was selling motor spare parts, and he brought them and gave them to him. In connection with the election campaign of the first respondent he visited in this car Ajjampur, Lakkavalli, Lingadahalli and other villages. He was doing canvassing work for the 1st respondent from the last week of November 1951 to 4th January 1952. P.W. 54 confirms the truth of this witness's evidence. The entries in Exs-QQQ1 and QQQ 2 show that during the entire month of December and till 5th January 1952, as stated by P.W. 54, he was in the service of the first respondent for doing his convassing work. During this period the said Morris car must have been with the 1st respondent for being used for his election work. There is nothing improbable if P.W. 54 had given to the 1st respondent both his car and his driver P.W. 63 for his election work because he was on very friendly terms with the first respondent as their evidence shows. He, P.W. 54, admits that the 1st respondent had proposed him as his polling agent. That he, P.W. 54, was a worker of the first respondent for election purposes is also clear from Ex-BBBB. The first respondent admits in his evidence that he had lent Rs. 1,500 to P.W. 54 as a hand loan without interest and without even taking any document. P.W. 54 admits that he purchased for the 1st respondent the stamp papers required for making the declaration to be annexed to the return of expenses Ex-AAA. He, P.W. 54, also admits that on the eve of the departure of Duggappa, the son-in-law of the first respondent to England, he gave him an entertainment on 29th September 1952. All these facts show that the said P.W. 54 and the first respondent are very intimate friends. It is no wonder, therefore, if P.W. 54 had allowed the 1st respondent to make use of the said Morris car and of his driver for his election work. It is also no wonder if P.W. 54 to support the evidence of the 1st respondent has told lies. Because the said Morris car was being used for his own election work when it required repairs, the 1st respondent has left it in the said garage along with his own car. This explains why the receipt Ex-W2 was given in his name, though the Morris car belonged to P.W. 54. Because the spare parts for this Morris

car had to be purchased by him, the 1st respondent has sent the driver P.W. 63 to go to the firm "Trades and Services" and purchase the spare parts for the repairs of the said car, as per Exs-YYY and YYY1 made out in the name of the 1st respondent. P.W. 62 the clerk of the said firm "Trades and Services" has spoken to Exs-YYY and YYY1. P.W. 14 the clerk of the said Ananda Rao garage has spoken to the bills Exs-W1 and W2. They thus bear out the evidence of P.W. 63. Because the repair of the said Morris car was the first respondent's affair, the foil of Ex-W2 was not sent to P.W. 54. It is for this reason he (P.W. 54) is not in a position to produce it. He falsely states that it is in his house and that he would produce it. He has not produced it uptil now. He, P.W. 54, also falsely states that he paid the sum of Rs. 100 to the garage of Ananda Rao at Shimoga and that he has got a receipt from the said garage. But he has not produced that receipt also, though at the time of his examination he (P.W. 54) stated that he would try his best to produce it. He admits that Ex W2 bears the signature of P.W. 63. He also falsely states that he paid the balance of Rs. 50 for repairing the said Morris car to the proprietor of Ananda Rao garage in the month of April 1952. But he strangely admits that the sum of Rs. 165 being the charges for repairing the said Morris car paid to Ananda Rao does not find a place in his accounts Ex-SSS. He also falsely states that P.W. 63 gave him the original of Ex-W2 and that he would try to produce it. But he has not produced it up till now. The evidence of the 1st respondent R.W. 19 as regards the repair of the said Morris car and the use of the said car by him is a tissue of falsehoods. In his objection statement to the election petition he states that he did not use the said Morris car of P.W. 54 at all for his election campaign. But in his evidence he states that he used it for a day. The reason why alterations were made in Ex-W2 and Ex-YYY1 to make it appear that the payments for the repairs of the said Morris car and for the purchase of spare parts were made by P.W. 54 who was the owner of the car is not far to seek. After the petitioner filed his election petition the first respondent finding that Exs-W2 and YYY1 which stand in his name would prejudice his case, he has got alterations made in them for the said purpose. P.W. 54 and the 1st respondent admit that the balance of the amount due to Ananda Rao garage was paid in the month of April

1952. P.W. 14 states in his evidence that when the Morris car was left in the garage the 1st respondent undertook to pay the cost of repair, and that, hence, the bill Ex-W2 and the entry in his account books Exs-Y and Z were made out as per Exs-Y1 and Z1 in the name of the 1st respondent. He, P.W. 14, states that about a month thereafter the 1st respondent came with two others to make payment and that they then said that the said Morris car did not belong to the 1st respondent but that it belonged to one Satyanarayana Setty, and that the bill should be drawn in his name, and that, hence, as the original of Ex-W2 had not been brought, he made the alterations in ink in Ex-W2 as per Ex-W2 (*a*). He further states that it was the 1st respondent that paid the money in respect of Ex-W2 and got the receipt Ex-AA prepared in the name of Satyanarayana Setty. It is evident that as the repairing charges in respect of the Morris car were made by the 1st respondent, the duplicate of Ex-AA must be with him and this explains why P.W. 54 has not produced it. P.W. 62 states that his firm received cheque towards the bill in respect of the spare parts supplied to the said Morris car on 28th April 1952 from Ananda Rao garage who had sent information that the said Morris car belonged to Sathyanarayana Setty P.W. 54 and not to the 1st respondent, and hence, they passed a receipt in favour of the said Sathyanarayana Setty as per the counterfoil Ex-*ZZZ*. If P.W. 54 had anything to do with the repairs of the car he should have with him the foil in respect of Ex-*ZZZ* and he should have produced it at the time of his examination. This too he has not done. The evidence of the first respondent as to why the alterations were made later on is a tissue of falsehoods. As the said Morris car was used for the election work, and as it was got repaired by him so that it might be fit for his election work, the payment of Rs. 165 for repairing this car paid to Ananda Rao garage should be deemed to be part of his election expenses. The first respondent has used this Morris car from the first week of November 1951 to 4th January 1952, *i.e.*, for 42 days. The value of the use of this car for 42 days at the rate of Rs. 20 per day comes to Rs. 840, and this amount along with a sum of Rs. 165, *i.e.*, in all Rs. 1,005, should have been shown in the first respondent's return of expenses.

(vi) As stated by P.W. 50, he was working as a driver under one Razack Sab of Shanthaveri before five months

prior to his examination. The said Razack Sab owned the car No. MY 7537 Z. He was driving this car while he was in his service. The said Abdul Razack had asked him to take the said car to the first respondent for being used by him for his election campaign. Accordingly he took the said car to the 1st respondent and drove it for him in connection with his election campaign for about 8 or 9 days after he took it to the first respondent. The 1st respondent himself was coming to the bunk of Venkataswamy & Co. at Tarikere for getting petrol for this car. Thereafter he gave the book Ex-MMM with instructions to sign the entries made relating to the petrol taken in the books of the bunk and get the signatures of the bunk man to the corresponding entries in Ex-MMM. Accordingly he was taking the signatures of the bunkman in Ex-MMM against the entries made therein in respect of the petrol taken for the use of the said car. He has taken the signature of P.W. 51 who was in charge of the bunk in Ex-MMM. Besides his signature he has also taken the signature of another person who was in charge of the bunk before P.W. 51, to Ex-MMM against certain entries made in it. His evidence regarding these facts has been fully borne out by the testimony of P.W. 51. He, P.W. 51, states in his evidence that in the month of December 1951 he was working as a clerk in the petrol bunk of Venkataswamy at Tarikere from 5th December 1951 to 22nd December 1951. Before him P.W. 12 was working as a clerk in that bunk. After 22nd December 1951 also P.W. 12 was working as clerk in this bunk. While he was working in that bunk at Tarikere the 1st respondent used to take petrol from him for the use of the cars which he was using for election propaganda. He (1st respondent) did not take during that period any petrol from that bunk for the use of any lorry of his. P.W. 51 admits having affixed his signature to Ex-MMM1 and MMM2 against the two entries made therein. He recognized Ex-MMM3 as the signature of P.W. 12. He states that on the top of Ex-MMM he wrote the name of the 1st respondent and also the car number and the driver's name as per Ex-MMM4. He also admits that he wrote the entries Exs-MMM1 and MMM2 and that MMM3 is in the handwriting of P.W. 12. He further admits that the entries Exs-S1 and S2 in the register of the bunk Ex-S correspond to Exs-MMM1 and MMM2 respectively. He further admits that Exs-R1 and R2 are in his handwriting and

he has initialled against them. Thus, he. P.W. 51, fully confirms the testimony of P.W. 50 that the 1st respondent had used the said car of Abdul Razack for his election campaign at least for 8 or 9 days. To overcome the evidence of P.W. 50, the 1st respondent has examined himself and R.W. 2. As stated by R.W. 2, prior to the election the 1st respondent had came to Shantaveri. He came there in the middle of December 1951 on a Friday just after 5 o'clock. He then contacted him and told him that the tyre of his car had burst and that he had no stepney and whether he could help him to get another car for him to go to Tarikere, get a stepney for fitting it to his car. He then approached the said Abdul Razack at Shantaveri and requested him to lend his car for a day to the 1st respondent to enable him to go to Tarikere and bring a stepney for fitting it to his car. The said Abdul Razack consented to give his car but told them that he had no driver. Thereupon Nagappa, the driver of the first respondent, took charge of the car of Abdul Razack and thereafter he drove the car with the 1st respondent in it and proceeded to Tarikere. The 1st respondent brought the car of the said Abdul Razack on the next day at about 11-30 A.M. and thereafter restored it to Abdul Razack informing him that he had put more petrol and oil in that car than had been used up for the journey for the help that Razack had given. The 1st respondent has spoken to the same effect in his evidence. But the evidence of P.Ws. 50 and 51 and Ex-MMM and the entries Exs-S1 and S2 show that what the 1st respondent, R.W. 19, and R.W. 2 have deposed is absolutely false. Ex-MMM shows that the said car has taken petrol on 21st December 1951, 22nd December 1951 and 25th December 1951 of the value of Rs. 38-4-5. It should be remembered that Ex-MMM, as stated by P.W. 50, was commenced to be kept some three days after the 1st respondent commenced to make use of the car MY 7537 Z. That R.W. 2 is highly interested in for swearing in support of the 1st respondent's case is abundantly clear from his evidence. He has admitted that his family was in one of the houses of the 1st respondent for 4 or 5 days after he was transferred from Tarikere as he had to vacate his official quarters. He, R.W. 2, admits that he and Govindappa, the brother of the 1st respondent, were interested in Shikari and that on one occasion they bagged a tiger and took a photo with the trophy. He further admits that

Ex-WWW 1, dated 9th December 1951, is the cheque for Rs. 300 which he got from the said T. Govindappa as he wanted a loan from him for the purchase of a gun. He, R.W. 2, admits that he had not executed any document in favour of the said Govindappa to evidence this hand loan, and that he did not ask him to pay any interest on this loan. These circumstances explain why he, R.W. 2, has readily come forward to forswear in support of the 1st respondent's story regarding the car belonging to Abdul Razack. The entries made in the Motor Check Register Ex-DDDD relating to MY 7537 Z also confirms the truth of the evidence of P.W. 50. As shown above, the 1st respondent has used the car of the said Abdul Razack for 8 or 9 days. The value of the use of the said car for 8 days at Rs. 20 per day comes to Rs. 160. It is clear from the law relating to elections that if a candidate uses the cars of others gratis, he should set out in the return of expenses the money value for the use of those cars. Failure to do so would amount to a suppression of a material particular from the return of expenses.

(vii) P.Ws. 39, 50 and 63 also state in their evidence that the 1st respondent made use of a car which he had secured from Koppa for his election work. But the particulars of this car as to the persons to whom it belonged, from whom it was taken and also the period during which it was used by the 1st respondent are not forthcoming. At any rate, as shown above, there is unimpeachable evidence that the 1st respondent used the aforesaid cars belonging to the aforesaid persons in addition to the two cars belonging to him which he admittedly used to carry on his election campaign. As per the estimates of the money value of the use of the aforesaid six cars which he had taken from others and also the charges for the purchase of tyres and repairs referred to above, the total amount comes approximately to Rs. 2,345. The first respondent should have shown this sum of Rs. 2,345 which is a most conservative estimate in his return of expenses. This he has failed to do.

(viii) The next important item of expenditure which the 1st respondent has suppressed from his return of expenses relates to petrol charges. As shown above, the 1st respondent has used six cars besides his two cars for carrying on his election propaganda. In his return of expenses Ex-AAA, the aggregate of expenses in respect of the petrol purchased amounts to Rs. 1,080-3-0. According to the 1st respondent's case

hs used only two cars of his and no other car. Hence, the said sum of Rs. 1,080-3-0 represents the money paid for the purchase of petrol for his two cars. As shown above, as the 1st respondent has used besides his two cars the aforesaid six cars for the days referred to above in connection with his election campaign, he must have purchased large quantities of petrol for running these six cars in connection with his election work, the value of which he has not given in Ex-AAA. As he has suppressed the fact that he had used these six cars for his election work, an adverse inference has to be drawn against the 1st respondent, and if he has made any payments for petrol over and above the said sum of Rs. 1,080-3-0 the said payments must be attributed to the petrol purchased by him for running the aforesaid six cars. P.Ws. 36, 37, 39, 48, 50 and 63 have stated in their evidence that the 1st respondent had made arrangements for the supply of petrol for the aforesaid six other cars which he had taken from the aforesaid persons for his election work. The entries in Ex-MMM confirm the truth of their evidence. P.W. 12 has produced the counterfoils Exs-N, P, Q, R, S, T of the petrol bills issued to the 1st respondent during the period from 11th November 1951 to 23rd November 1951 and from 24th November 1951 to 4th January 1952 both days inclusive. The 1st respondent has admitted that Exs-WWW and WWW 10 are the cheques issued by him to the clerk in charge of the petrol bunk at Tarikere. The aggregate of the amounts paid to the clerk ef the said petrol bunk under these cheques comes to Rs. 3,279-14-0. The 1st respondent admits in his evidence that he has not with him any *dakhla* to show how much petrol he purchased for his timber business and how much was purchased for his areca business during the months of November and December 1951 and January 1952. He has also admitted that he has no *dakhlas* to show how many lorries he had hired during this period for conveying areca and timber. Exs-XVI, XVII, XVIII and XIX produced by R.W. 8, the Accountant of the D.F.O.'s Office, Bhadravati, show that the 1st respondent has conveyed timber in lorries over an aggregate distance of approximately 181 miles for which he might have approximately purchased about 22 gallons of petrol, and the value of which may be about Rs. 66. Thus, the quantity of petrol purchased by him for his timber business is negligible compared with the huge quantity of petrol purchased for running the cars in connection

with his election campaign. Exs-N, P, Q, R, S, T show that for the period covered by these bills he has purchased from the said bunk at Tarikere petrol of the value of Rs. 2,163-2-3. P.W. 12 has admitted that he has not produced the counterfoils of bills issued for the period from 23rd November 1951 to 5th December 1951. Hence, Exs-N, P, Q, R, S, T, do not give us a correct idea of the petrol purchased by the 1st respondent from 27th October 1951 to 4th January 1952. If from Rs. 3,272-14-0 the sum of Rs. 1,083-3-0, which is the amount shown in the return of Expenses Ex-AAA, is deducted, the balance of Rs. 2,199-11-0 represents the value of petrol purchased for running the said six cars and for his timber and areca business. Out of this sum, a sum of Rs. 1,250 may be taken, on a most conservative estimate, to be the value of the petrol purchased by him for the use of the said six cars. As the 1st respondent has failed to show in his return of Expenses Ex-AAA what quantity of petrol he had purchased for these six cars, it should be held as against him that the said sum of Rs. 1,250 represents the value of the petrol that he had purchased for running the said six cars.

(*f*) The next item of expenditure which the 1st respondent has not included in his return of expenses relates to the hotel expenses incurred by him in connection with his election campaign. In Ex-AAA he has shown in respect of this item an expenditure of only Rs. 28-11-0 being the hotel expenses incurred by himself and his brother T. Govindappa when they went on propaganda tours. He has not mentioned the names of the proprietors of the hotels in which they took food though he should have done so as required by the Election Law. It is necessary to determine in this connection if the 1st respondent has incurred any expenses under this head beyond what he has set out in Ex-AAA.

(i) As stated by P.W.19, who has been running a hotel at Ajjampur, one Harulappa has asked him to supply tiffin to persons who would bring chits from him and debit to his account the expenses incurred in that connection. This arrangement had been made at the time of the last election. He had asked him to do so three months prior to the election, and during this period persons who brought chits from the said Harulappa used to take tiffin in his hotel. He used to enter the amounts relating to this transaction in an account book given by the said Harulappa. He has not produced it as the said Harulappa to take it away after paying his dues. The aggregate of the amounts debited to the account of the said Harulappa in this

connection came to about Rs. 700. The said Harulappa used to make payment in cash which aggregated to Rs. 500 and for the balance he got a cheque from T. Govindappa, brother of the 1st respondent. The 1st respondent admits that the cheque Ex-WWW (11) for Rs. 230 was issued by his brother T. Govidappa to Babu Rao P.W. 19. The said Harulappa, as the evidence on record shows, was the agent of the 1st respondent in connection with his election contest. Hence, as agent, he had made the aforesaid arrangement on behalf of the first respondent. Because on the basis of this arrangement, the balance of Rs. 230 was due from the 1st respondent to P.W. 19, the said T. Govindappa who was also working as his agent, as admitted by the 1st respondent, has issued the cheque WWW (11) to the said P.W. 19. This inference is rendered probable by the evidence of P.Ws. 30, 50, and 63, who, while working as drivers of the said cars for the 1st respondent while he was carrying on the election propaganda, had taken tiffin and meals in the hotel of P.W. 19. These witnesses state that at Ajjampur the 1st respondent had made arrangements for their tiffin and meals in the hotel of P.W. 19. There is absolutely no reason to disbelieve their evidence as regards these facts. The 1st respondent should have shown in his return the said sum of Rs. 700 which was paid to P.W. 19. As stated by P.W. 38, who has been running a hotel at Tavarekere, Oblappa and Ramiah came to him a month before the election to the Legislative Assembly and asked him to supply tiffin to all the voters at the election. They used to bring persons to his hotel and asked him to serve tiffin to them. A sum of Rs. 75 was due in the aggregate from them on this account. Out of that amount, Ramiah had paid sums of money which aggregated to Rs. 45 and after the election when he pressed him for the balance of Rs. 30 they told him that Mallappa of Tavarekere who had stood surety for them would pay him. He then asked Mallappa to pay him but he said that the said Ramiah would pay. In that connection the said Mallappa gave a post card Ex. JJJ. which Ramiah had written to him. Subsequently he went to Tarikere and recovered the balance of Rs. 30 from the said Ramiah. P.W. 40 confirms the truth of his evidence. He states that the said Oblappa and Ramiah, who used to remain at Tavarekere, were acting as agents of the 1st respondent at Tavarekere, for carrying on election propaganda on behalf of the 1st respondent, had arranged for food to

the voters in the hotel of P.W. 38 about 1 or 1½ months prior to the election on 4th January 1952 and that he too was entertained by them in that hotel on three or four occasions. The 1st respondent admits that his family has been running a saw mill and that the saw mill has post cards like Ex. JJJ. having the address of the mill printed on them. This post card renders highly probable the evidence of P.W. 38. Because he pressed Mallappa, who had stood surety for the said Ramiah and Oblappa who were acting as agents of the 1st respondent at Tavarekere, for money, the said Mallappa, in turn, pressed the said Ramiah for payment and the latter has, after making enquiries at the said mill, taken the post card from the mill and written Ex. JJJ. to the said Mallappa. There is no reason, therefore, to disbelieve their evidence. It is thus clear that a sum of Rs. 75 was incurred as charges for supplying tiffin to the voters in this hotel and by the 1st respondent this amount too has not been shown in the return of expenses Ex. AAA.

(ii) The 1st respondent has admitted that the cheque Ex. WWW(12), dated 24th January 1952, for Rs. 160 was given by his brother T. Govindappa to one Annaji Urs who was running a hotel at Tarikere, that the cheque Ex. WWW13 also dated 24th January 1952 was issued by his brother T. Govindappa to one Srinivasa Rao who was running a hotel, and that the cheque Ex. WWW14. dated 24th January 1952 for Rs. 225 was issued to one Narayanappa by his brother T. Govindappa who was a hotel keeper. The 1st respondent has not properly explained why these cheques were issued to the said hotel keepers at about the time of the election. As he says, he is a timber and areca-nut merchant. He could not have had any transactions with them in the normal course of timber and areca business. The reasonable inference is that he has issued these cheques to the said hotel keepers because they had catered to the voters at the time of election in accordance with his arrangements with them. This aggregate sum of Rs. 445 paid to the hotel keepers under the said cheques has not also been shown in the return of expenses Ex. AAA. Thus, all told, under the item of hotel expenses an aggregate sum of Rs. 1.220 should have been shown besides the said sum of Rs. 28-11-0.

(*g*) The next item of expenditure which the 1st respondent has suppressed from the return of expenses Ex. AAA. relates to the remuneration paid to his workers in connection with his election

campaign. In his evidence the 1st respondent states that he had not engaged any persons especially to distribute leaflets in the several villages of Tarikere constituency either on the election day or prior to it, that he was himself distributing such leaflets whenever he used to go in his car, that he had not engaged any persons in each village to take up the responsibility of distributing his leaflets among the people, and that he had not engaged any person to ride on bicycles to distribute leaflets except his three or four sons. His aforesaid evidence regarding this matter of controversy is too absurd to be believed. He admits in his evidence that he had got flags prepared bearing his symbol of a hut, that he had also got prepared bamboo thatties for pasting paper symbols thereon for propaganda purposes, that he had also got prepared wall posters bearing his symbol. In the light of these admissions, his evidence that he had not engaged any persons to carry these bamboo thatties, having his symbol, for his propaganda work, in the villages and that he used to get the wall posters pasted to the walls by the driver is also too absurd to be believed. In Ex. AAA. he has shown that he has paid in the aggregate Rs. 477-12-0 for printing wall posters, hand bills, etc. Considering the amount that he has spent on this account, it is preposterous to state as he has done that he had not engaged any workers to assist him in distributing them or for pasting the wall posters to the walls or for carrying thatties bearing his symbol. As shown above, Ex. BBBB. shows the names of all the persons, as stated by P.W. 63, who had worked for the 1st respondent in connection with the election campaign. The 1st respondent stated in the course of his evidence when he was confronted with Ex. BBBB that persons bearing Sl. Nos. 4, 5, 11-17, 19, 21, 22, 23, 25-32, 34, 39, 41, 43-48, 50-57, 59-69, 71, 73, 75-81, did not assist him in his election work. He thereby admits that the other persons mentioned in the list assisted him in his election work. He also admits that Ex. BBB is the letter written to the Returning Officer by him naming his polling agents and that Ex. CCC. series are the forms filled up by him for nomination of his polling agents. There is absolutely no reason to disbelieve the evidence of P.W. 63 regarding Ex. BBBB. Ex. BBBB. may be taken to contain the names of all the persons who as workers helped the 1st respondent in his election campaign. Ex WWW22 is a cheque dated 20th December 1951 for Rs. 2,000 issued by the 1st respondent's brother T. Govindappa to one H. S. Thimmiah his polling agent. Ex. WWW21 is a cheque for Rs. 500 dated 16th December 1951 issued by the said Govindappa in favour of N. C. Keshavamurthy which has been endorsed to R. Hanumanthappa, a polling agent of the 1st respondent. Ex. WWW20 dated 18th January 1952 is a cheque for Rs. 57 issued to one Rangoji Rao polling agent of the 1st respondent. Ex. WWW18 dated 27th February 1952 is a cheque for Rs. 50 issued to G. Thimmiah, polling agent of the 1st respondent. Ex. WWW25 dated 11th February 1952 is a cheque issued for Rs. 25 to the 1st

respondent's polling agent Puttiah. Ex. WWW15 dated 24th January 1952 is a cheque for Rs. 43 issued to S. Ramiah who was working as the agent of the 1st respondent. The amounts paid under the said cheques which aggregate to Rs. 2,675 to the aforesaid polling agents of the 1st respondent should be taken as the amount given by the 1st respondent to his agents for distribution among those who had worked in connection with his election propaganda. This amount also the 1st respondent has omitted to show in his return of expenses Ex. AAA.

(*h*) The next item of expenses which the 1st respondent has failed to include in his return of expenses is the hire paid by him for cycles used in connection with his election campaign. As stated by P.W. 18, the said C. Parameswarappa, Devendrappa and one Rajasekharappa have signed against Ex. FFF(1) on behalf of the 1st respondent, and that sum of Rs. 75 was due to him on account of hire, as shown in Ex. FFF2, T. Govindappa, the brother of the 1st respondent paid the sum of Rs. 75 to him. As shown above, there is absolutely no reason to disbelieve his evidence. The 1st respondent has not included this item of expenses incurred by him for taking cycles on hire for election propaganda purpose in his return of expenses.

(*j*) The next item which is not shown in the return of expenses for consideration relates to the T.B. charges. As P.W. 13 states in his evidence Ex. U5 relates to the period from 23rd December 1951 to 24th December 1951 showing that Sriyuths L. Siddappa R.W. 1 and Mohamed Imam stayed in the T.B. at Tarikere and that T. Govindappa has paid the T.B. charges on their behalf as per the entry Ex. U6 in the T.B. register Ex. U. R.W. 1 admits in his evidence that on 23rd and 24th December 1951 they carried on election propaganda in Tarikere constituency and during that time they stayed in the T.B. at Tarikere. There is nothing improbable therefore if T. Govindappa who is obviously the brother of the 1st respondent has paid the T.B. charge of Re. 1-11-0. As this expenditure was incurred by the 1st respondent in connection with his election propaganda it should have been shown in the return of expenses. He has omitted to do so.

30. The 1st respondent has shown in his return of expenses Ex. AAA that the aggregate amount of the expenses incurred by him in connection with his election campaign was only Rs. 2,617-9-9. He has made the declaration as per Ex. AAA in support of his return of expenses affirming that the return of expenses was true to the best of his knowledge and belief, and that except the expenses therein set forth, no expenses of any nature whatsoever had been to his knowledge or belief incurred for the purpose of his candidature. For the reasons stated above, we are convinced that the return of expenses filed by the 1st respondent is false in material particulars

because he has deliberately failed to include in it the expenses incurred by him in respect of—

(1) the said six cars which he had used for his election campaign, which, on a modest estimate, amount to Rs. 2,345;

(2) petrol purchased for these six cars which, on a conservative estimate, amount to Rs. 1,250;

(3) treating and feeding in hotels and restaurants the voters and workers which amounts to Rs. 1,230;

(4) the remuneration paid to his workers and agents which amounts to Rs. 2,675;

(5) hire of cycles from P.W. 18 which amounts to Rs. 75;

(6) the charges paid to the care-taker P.W. 13 of the T.B. at Tarikere amounting to Rs. 1-11-0.

These several amounts which he has omitted from his return of expenses aggregate to Rs. 7,566-11-0. At any rate, if the expenses incurred in respect of the aforesaid items which he has omitted are also taken into account, then the total amount of expenses incurred by him in connection with his election campaign would easily exceed the maximum limit of Rs. 5,000 fixed by rule 117 of the Rules, as rightly contended by the petitioner.

(*a*) The expression "false" occuring in clause (4) of section 124 of the Act indicates that the expenses shown in the return of election expenses are deliberately incorrect, and this incorrectness is due to a corrupt motive. The motive may be to omit legitimate expenses from the return where a maximum scale has been fixed or the intention may be to conceal expenditure which would go to prove some corrupt practice (*vide* Law of Elections and Election Petitions by H. S. Doabia at page 214). Omission of certain items of expenses from the return of election expenses may raise the presumption that the omitted items were corrupt. Expenses for entertainment by an agent must be included in the return as having been incurred in the conduct or management of an election (*vide* Hammond, Election Cases 102). If any particular item of expenditure is not included in the return of expenses, it is evidence of knowledge on the part of the election agent that the expenditure is corrupt (*vide* Jagathnarayan's Report on Election Petitions, Vol. 3, page 93).

(*b*) As the 1st respondent has deliberately omitted to enter in his return of expenses the aforesaid items of expenses, the irresistible inference is that he has done so with a corrupt motive. He has failed to include those expenses in his return of expenses to avoid the consequence of exceeding the limit of Rs. 5,000 which is the maximum fixed by law, and also to conceal the corrupt practices relating to such expenses. The reason why the law has fixed a maximum for the election expenses is, in our view, to prevent a candidate having large means carrying on election propaganda at considerable cost so as to reach all the voters in his constituency by resorting to all sorts of corrupt practices such as treating, etc., with

a view to secure more votes from them for himself to the detriment of a candidate who can ill-afford to spend money to that extent for his election propaganda. It is certain that the success of the 1st respondent was due to the fact that he had carried on election propaganda using the aforesaid six cars and cycles and with the assistance of a large number of workers with a view to secure votes. It is also certain that if he had not used the aforesaid six cars and cycles and if he had not had the assistance of a large number of workers, he might not have succeeded in the election at all.

(*c*) For the reasons stated above, in our view, the 1st respondent has committed the minor corrupt practice referred to in sub-section (4) of section 124 of the Act by making a return of election expenses which is false in material particulars and also by making a declaration verifying such a return. We are also of the view that the said minor corrupt practice, of which the 1st respondent is guilty, materially affects the result of election, and hence the election of the 1st respondent is void for this reason also as per section 123 of the Act (*vide* Indian Election Law by H. L. Sarin and K. L. Pandit at page 507).

(*d*) For the reasons stated above, we hold on the 11th issue that the return of election expenses lodged by the 1st respondent is false in material particulars and that the 1st respondent has omitted to include in the return of election expenses, expenses incurred by him in connection with the election which would easily exceed the sanctioned limit of Rs. 5,000 as per particulars set out in para 7 of the list of particulars.

31. The next issue for consideration is whether the election of the 1st respondent has been procured and induced by the said corrupt practices with the result that the election has been materially affected. In the light of our views expressed while discussing the evidence adduced by the petitioner in proof of issues 5, 6 and 11, we have no hesitation in asserting that the election of the 1st respondent has been procured and induced by the corrupt practices referred to above which relate to these issues, with the result that the election has been materially affected. This is our finding on the 12th issue settled in this case.

32. The next issue for decision is the 13th issue. In his election petition the petitioner in para 10 has alleged that the counting of votes was done in such a manner that it was impossible either for the petitioner or his agents to know and note the particulars of improperly accepted votes for the 1st respondent. The petitioner has not let in any evidence to prove this allegation. He has not even examined himself. If there was any basis of truth in this allegation, he would certainly have not abstained from examining himself at least to prove this allegation. The evidence of the Returning Officer P.W. 16 belies the aforesaid allegation. He, P.W. 16, has stated that after the counting was over a nd the 1st respondent was found to have got the largest number of votes, the petitioner

asked for a recount. He allowed a recount. Then too it was found that the 1st respondent had secured the highest number of votes and, thereafter, he declared that the 1st respondent was duly elected. Ex-VI is the application by the petitioner for recount. After recounting, the petitioner has made a note as per Ex-VI (a) admitting the correctness of the recount to which he has affixed his signature. In the light of his evidence, there is absolutely no force in the aforesaid allegation made by the petitioner. Hence, we find the 13th issue in the negative against the petitioner.

33. As shown above, the 1st respondent has obtained a majority of votes by resorting to the aforesaid corrupt practices. If he had not resorted to them, he would, in all probability, not have obtained that majority. Hence, on the 14th issue we hold that the petitioner would have obtained a majority of votes had it not been for the aforesaid corrupt practices on the part of the 1st respondent.

34. The petitioner has prayed, as alternative relief, for a declaration that the election of the 1st respondent is void and that he has been duly elected. But for the votes obtained by the returned candidate, the 1st respondent, by the aforesaid corrupt practices the petitioner would have obtained, as shown above, a majority of votes, and hence, under section 101, clause (*b*) of the Act, the petitioner is entitled to be declared that he himself has been duly elected. Where, if the election of the returned candidate is void, then the petitioner who has secured a majority of valid votes is entitled to be declared as the successful candidate (*vide* Hammond, Election Cases 187 to 189).

35. For the reasons already stated we dismiss the recriminatory petition filed by the 1st respondent with costs of the petitioner.

36. For the reasons already stated above, we allow the election petition under Section 98 (c) of the Representation of the People Act, 1951, and declare that the election of the returned candidate, namely, the 1st respondent, is void, and the petitioner to have been duly elected from the Tarikere Constituency to the Legislative Assembly.

37. We direct that the 1st respondent shall pay to the petitioner Rs. 600 toward costs of the recriminatory petition. The 1st respondent shall also pay Rs. 250 to the petitioner towards the cost of the election petition. The said sum of Rs. 250 includes the cost of evidence and the Advocate's fee. As issues 2 to 4 and 7 to 10 have been held against the petitioner, and as he has not also examined himself to explain certain facts which are disclosed by the evidence, we cannot grant him more than Rs. 250 as costs in respect of the election petition. The 3rd respondent, as he is not interested in the result of the case and as he has been impleaded as a *pro forma* respondent, shall bear his own costs. The costs awarded to the petitioner shall be paid out of the security amount deposited by the 1st respondent in connection with his recriminatory petition.

38. We find under section 99 (1) (*a*) (*i*) of the Act that it has been proved that the 1st respondent has committed the major corrupt practices referred to in sub-sections (6) and (8) of section 123 of the Act, which entail as per section 140 of the Act, the disqualification for membership of Parliament and of the Legislature of every State for a period of six years counting from the date on which the finding of this Tribunal regarding the said corrupt practices takes effect under the Act, and also the minor corrupt practice referred to in section 124 (4) of the Act which entails not only the aforesaid disqualification under section 140 of the Act, but also, as it involves the submission of a return of election expenses which is false in material particulars as adjudged by us, the disqualification for voting any election for a period of five years from the date by which the return was required to be lodged as per section 143 of the Act. We have not named the said Channapur Patel Parameswarappa and the said Ahmed Jan in this order as per the sub-section 1 (*a*) Clause (*ii*) of section 99 of the Act, as the proviso to the said clause (*ii*) enjoins us not to name them in the order if the conditions referred to in its clauses (*a*) and (*b*) are not present. These conditions are not present.

39. As there is a difference of opinion at the conclusion of the trial between Sri C. V. Channappa, a member of this Tribunal on the one hand, and the majority of the Tribunal namely, the Chairman and the other member Sri Iqbal Hussain on the other on the question regarding the orders to be made under sections 98 and 99 of the Act, and as the opinion of the majority as per section 104 of the Act prevails, the orders of the Tribunal are expressed in terms of the views of the said majority.

Dictated to the Stenographer, transcribed and then pronounced in the open Court Hall of the District Judge where the Tribunal has its sittings, on the 15th day of January 1953.

(Sd.) B. R. RAMALINGIAH,
15-1-1953.

(Sd.) MIR IQBAL HUSSAIN,
15-1-1953.

I have dissented from the views of the learned Chairman and my learned colleague Sri Mir Iqbal Hussain and according to my view the petition has to be dismissed. The learned Chairman seems to be of the view that no dissenting note is permissible as there is no specific provision for the same. With great respect, I differ from this view. According to section 90 of the Representation of People

Act the election petition shall be tried by the Tribunal, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure. Hence according to Order 41, Rule 34, C.P.C., a dissenting Judge can write separate judgment and pronounced the same. Hence, the writing of separate decision by the dissenting member of the Tribunal is clearly allowed under the Act and I have further amplified this view in my dissenting decision which I shall presently pronounce.

(Sd.) C. V. CHANNAPPA,
Member,
15-1-1953.

BEFORE THE ELECTION TRIBUNAL, SHIMOGA.

Dated the 15th Day of January 1953.

PRESENT:

SRI B. R. RAMALINGIAH, M.A., B.L.,

Chairman,

SRI C. V. CHANNAPPA, B.A., B.L.,

Member,

and

SRI MIR IQBAL HUSSAIN, B.A., B.L.,

Member.

Shimoga Election Case No. 1—1952-53.

Petitioner ... SRI T. C. BASAPPA, SON OF CHANDAPPA, Timber Merchant, Tarikere.

Vs.

Respondents ...

1. SRI T. NAGAPPA, SON OF M. THIMMIAH, Timber Merchant and Landlord, Tarikere.
2. SRI CHANDRASEKHARAPPA, Advocate, Tarikere.
3. SRI T. V. NARASINGAPPA, SON OF VENKATARAYAPPA, Landlord, Tarikere.
4. SRI NADIG PHANIAPPA, Landlord, Maruti Street, Tarikere.
5. SRI B. MAHESWARAPPA, SON OF NAGAPPA, Chairman, Taluk Development Committee and Landlord, Anuvanahalli, Shivane Hobli, Tarikere Taluk.
6. SRI H. M. LINGAMARIAPPA, landlord, Hunusaghatta, Amruthapur Hobli, Tarikere Taluk.
7. SRI D. H. HARALAPPA, SON OF HARALAPPA, Landlord and President, Town Municipal Council, Tarikere.
8. SRI T. H. THIMMIAH, landlord, SON OF HANUMANTHIAH, Tarikere.
9. SRI G. H. HANUMIAH, SON OF HANUMIAH, landlord, Tarikere.

DISSENTING DECISION

OF

SRI C. V. CHANNAPPA, B.A., B.L.,

Member, Election Tribunal.

SHIMOGA ELECTION CASE No. 1 OF 1952-53.

DECISION.

Facts of the Case.

The petitioner and respondents were the candidates for the last Legislative Assembly Election of the Mysore State from the Tarikere Constituency and respondents 5 to 8 withdrew their candidatures subsequently with the result the Election was contested only by petitioner and respondents 1 to 4. The Election of the said Tarikere Constituency took place on 4th January 1952 and the counting of the votes was on 28th January 1952 and the petitioner and respondents 1 to 4 are said to have obtained 8059, 8093, 6239, 1644 and 1152 votes respectively and as the first respondent secured the largest number of votes, he was declared to have been duly elected by the Returning Officer. Subsequently the petitioner has filed the present application setting out various material irregularities and corrupt practices and states that the election of the first respondent is void and prays that he himself may be declared as the successful candidate. The material irregularities and the corrupt practices alleged by the petitioner may be briefly referred: It is stated that the polling at booth No. 1 of Ajjampur town did not commence till 8-25 a.m. on 4th January 1952 though the authorities had fixed that the polling should commence at 8 a.m. itself and it is, therefore, alleged by the petitioner that on account of this material infringement of the rules many voters went away without exercising their franchise with the result the election has been materially affected. It is also alleged that the seals of the ballot boxes of Ajjampur booth were not in tact with the result there has been a violation of fundamental requirements of the Election Rules. The petitioner further avers that in some polling booths, particularly in polling booth No. 6 of Tarikere kasaba and polling booth No. 18 of Koratagere the number of votes actually polled were found in excess of the number of ballot papers issued and this material irregularity has also vitiated the election. It is also stated that some votes had been counted as valid in favour of the first respondent though they ought not to have been so counted, as some of them were impersonated votes or votes not of those of the actual voters found in the list inasmuch as some persons who were not entitled to vote appear to have voted. It is also alleged that the first respondent had hired and procured a motor bus which was a service bus running between Tarikere and Hiriyur belonging to one Ahmed Jan and was used for conveying the voters. The petitioner further avers that the first respondent has taken the assistance of a number of Government servants, in particular his son-in-law, one Duggappa and one Patel Parameswarappa of Basavapura village to further the prospects of his election. The petitioner next avers that the first respondent

through his agents influenced some voters to vote for himself using the name of Manjaiah Heggade of Dharmasthala and exploiting the feelings of reverence of several Hindu voters by getting handbills freely circulated in that connection. It is also alleged that the first respondent fed voters and tried to extract promises of support for him. The petitioner further states that the first respondent by himself and through his agents systematically disturbed election meetings, in particular a meeting arranged at Ajjampur and also intimidated the petitioner's workers by threat of violence. It is further averred that the return of election expenses lodged by the first respondent is false in material particulars and it is, therefore, alleged by the petitioner that but for the various acts referred to above and corrupt practices, the first respondent would not have secured the votes and it is, therefore, stated that the election of the first respondent is void and the petitioner prays that he himself may be declared as the successful candidate.

2. The respondents 1 and 3 have filed objections to this application while the other respondents have practically remained *ex parte*. The main contesting respondent is the first respondent. The first respondent states that there has been no violation of the rules as alleged by the petitioner and he further avers that the presiding officer of Ajjampur booth No. 1 has made a report as to why there was delay in commencing the polling and at the time of counting none of the candidates have objected to that circumstance and, on the other hand, the petitioner also has testified that nothing untoward took place and he is, therefore, estopped from putting forward this contention. It is also further stated by the first respondent that the version of the petitioner that the seals were not in tact or secure is not correct. He also states that he has not hired the service bus as alleged by the petitioner and he denies having taken assistance of any Government servant and he practically denies the alleged corrupt practices. He further denies the distribution of the handbills referred to by the petitioner and he also denies the alleged disturbance at the election meetings or the alleged intimidation referred to by the petitioner. In short, he denies the alleged corrupt or illegal practices and states that the election proceedings were duly conducted and prays that the petition may be dismissed with costs. Further this first respondent has also filed a recriminatory petition under section 97 read with sections 81 and 83 of the Representation of the People Act and he states that the petitioner himself is responsible for many material irregularities and corrupt practices and he has set out the details regarding the same. Subsequently, inasmuch as this respondent has not pressed the recriminatory petition, it is unnecessary to refer to the averments made in that petition.

3. The third respondent avers that the petition is barred by time and that he is not a necessary party to this proceedings and he also states that there has been no infringement of the rules and he practically denies all other averments made in the application. And

he further states that the election was legally held and the petition is liable to be rejected.

Pure Questions of Law.

4. Practically at the very first hearing the petitioner filed an application praying for amendment of the main application asking for relief that the entire election was void and this application was opposed by the contesting respondents and subsequently the application was allowed by the Tribunal and this additional prayer has also been included in the application. One of the objections of the contesting respondents is that this election petition is not competent and is also barred by time. It is also further avered that the election petition is not duly presented inasmuch as it has offended section 117 of the Representation of the People Act and these matters are covered by issues 15 and 16. Inasmuch as these issues are practically questions of law they may be considered first. According to section 80 of the Representation of the People Act 1951, no election shall be called in question except by an election petition presented in accordance with the provisions of part VI of the Act. According to section 85 of the said Act, the Election Commissioner shall dismiss the petition if the provisions of sections 81, 83 or 117 are not complied with and according to that section the Election Commission would have dimissed the petition if the due provisions of law had not been complied with. According to section 86 of the Act, if the petition is not dismissed under section 85, the Election Commission shall appoint an Election Tribunal for the trial of the petition and in accordance with that the present Tribunal has been constituted. Further, according to section 114 of the Indian Evidence Act, there is a presumption that all official acts have been properly and correctly done. If the Election Commission had found that this petition itself was not valid, they would have dismissed the same and there would have been no necessity whatsoever for constituting this Tribunal. In the circumstances the contention of the contesting respondent that the election petition itself is not maintainable has absolutely no force.

5. Next adverting to the question of limitation, practically the same observations will apply to this matter as well. Further at page 180 of Indian Election Cases by H. S. Dobia, Vol. II., it is observed that the question of limitation is beyond the scope of the Election Commission. Moreover, if the election petition had not been duly presented and if it was otherwise defective, the Election Commission would have rejected the petition. In the circumstances, there is absolutely no force in this contention either. In the result, both these issues have to be held against the contesting respondents.

Essential Questions Involved in the case.

6. The important questions which require to be adjudicated in this case are practically three. The first is whether the entire election

is void according to section 100 clause (1) of the Representation of the People Act. The second is whether the election of the returned candidate the first respondent, is void according to clause (2) of section 100 of the said Act. The third is whether the petitioner is the duly returned candidate within the meaning of section 101 of the Act. Many issues have been framed in this case and a good number of issues relate to the recriminatory petition filed by the first respondent and, inasmuch as the recriminatory petition has not been passed by the first respondent, it will be unnecessary to refer to those issues. The other issues relating to the case practically come within the purview of any of the three questions referred to above.

7. Adverting to the first question whether the entire election itself is void, the entire election may be declared to be void under clause (1) of section 100 of the Act if the election has not been a free election by reason that the corrupt practices of bribery have extensively prevailed in the election or that the election has not been a free election by reason that coercion or intimidation has been excercised or resorted to by any particular community, group or section, on another community, group or section, to vote or not to vote in any particular way at the election. In the first place, this relief had not been prayed for in the main application. It is only later on this relief has been added. Further, it is only in respect of booth No. 1 of Ajjampur town that there were said to have been material irregularities in connection with the commencement of poll and sealing of the boxes and further even alleged corrupt practice may be said to have been confined to one or two booths. The third issue framed in the case is as follows:

> "Has the election been vitiated by the material irregularity that in some polling booths, in particular in polling booth No. 6 of Tarikere
>
> "Tarikere Kasaba and also in polling booth No. 18 Koratagere the number of votes polled were put in excess or ballot papers issued".

and practically no definite evidence has been adduced on the side of the petitioner regarding the third issue. Further it is only when the conditions that are enumerated in clause (1) of section 100 of the Act are existing, then the entire election may be declared to be void. Practically there are no definite allegations in the main petition to show how the entire election itself is void. According to section 100 clause (1) sub-clause (a) of the Act the alleged corrupt practice of bribery or of undue influence should have extensively prevailed at the election. Again with regard to the alleged coercion or intimidation, some evidence has been adduced to show that in connection with a meeting that was arranged about December 1951, the K. M. P. party people disturbed the meeting arranged by the Congress and P. W. 84 Sri Channabasappa, the District Board President, Mysore and who is one of the prominent members belonging to the Congress party

has spoken about the disturbance alleged to have been caused by some members of the K. M. P. party. According to P. W. 84 and some other P. Ws. the K. M. P. party people disturbed the meeting arranged by the Congress party by persistently using the loud-speaker vans. Further, it is stated that some members of the K. M. P. party used to intimidate the Congress workers. P.W. 23 Siddappa who was said to be working as secretary of the Congress office at Ajjampur at the time of the last elections has stated that in the month of December on a certain day when he was in a hotel one G. Thimmaiah and another Kadappa belonging to K. M. P. party came there and asked him not to canvass for the Congress candidate and also not to stir out of the house and that they would trouble him if he disobeyed their instructions and he further states that subsequently also they used to threaten. In this connection, it is contended by the learned co unsel for the first respondent that practically no weight whatsoever can be attached to the evidence of this witness and it is also further urged that the version of this witness has not been corroborated by any other P. Ws. in material particulars. From the cross examination of this witness, it is seen that he was once a clerk in Government depot at Kadur and Sakrepatna and that he was removed on account of retrenchment and the Government had launched a case against him in the court of the First Class Magistrate, Chickmagalur on the ground that he had misappropriated the grains while he was a clerk in the depot and in that connection he had been arrested and one Gangappa and another person whose name the witness is not able to remember had stood as sureties for releasing him on bail in that connection. But even the petitioner had engaged the services of this witness for propaganda work on a salary of Rs. 40 per month. Seeing the evidence of this witness as a whole, he cannot be said to be quite disinterested and further his version has not been corroborated by any other P.Ws. In the circumstances, the alleged coercion or undue influence has not been clearly established at all. It may be said that the petitioner had stood on the Congress ticket while the 1st reapondent had stood on the K.M.P. party ticket. So all that can be gathered from the examination of these P. Ws. is that some of the by K. M. P. party people disturbed the meetings of the Congress party using loudspeaker vans once or twice. Even if the alleged disturbance is true, it cannot at all be said the disturbance so caused will come within the ambit of sub-clause (b) of clause (1) of section 100 of the Act. Further, inasmuch as both sides have not adduced any clear evidence to show that the entire election itself is void, they do not appear to be very keen on this matter. On the whole, there are absolutely no grounds whatsoever to show that the entire election itself is void.

8. Next adverting to the second question which is the crucial one in the case, it is contended by the learned counsel for the petitioner that on account of the several material irregularities and the corrupt practices the election of the 1st respondent is void according to

clause (2) of section 100 of the Act. On the other hand, it is urged by the learned counsel for the 1st respondent that the irregularities set out by the petitioner do not materially affect the election and the evidence regarding the alleged corrupt practices is not at all clear and cogent and there are absolutely no grounds whatsoever to show that the election of the 1st respondent is void. Practically this question is more or less a question of fact and it has to be seen how far the evidence adduced in the case regarding the alleged corrupt practices is clear and convincing. I shall deal with several material irregularities and alleged corrupt practices in order. Before doing so the general backgrounds and the way in which evidence has to be appreciated in a case of this type may be briefly referred to. After the attainment of independence this is the first general election which is held throughout the country on thebasis of adult suffrage, and prior to that during the regime of the British Rule though there used to be elections, the franchise was quite limited. With the attainment of independence and with the inauguration of the New Constitution, it has been the pride of our country that every adult person has a right of exercising franchise though such a right may not be existing even in some of the western countries. Though this right has been conferred on every adult citizen, it has to be seen how far an adult is able to exercise his franchise intelligently. It is well-known that the masses in our country and particularly those residing in the rural parts are practically illiterate. And further even the economic position of the common man in our country is also not quite happy. Again it is within the common knowledge of many judicial tribunals that there is a factious spirit in many of the villages which apparently has given room for litigation and rivalry. Further though the proceedings of this tribunal are practically in accordance with the Code of Civil Procedure, there are clear authorities to show that so far as alleged corrupt practices are concerned the proceedings have to be dealt as though it is a criminal one, and according to the trend of the authorities which I will refer when dealing with the alleged corrupt practices it is the petitioner that has to substantially prove all the alleged corrupt practices and it is the respondent who is practically in analogous position of an accused and who will be entitled to benefit of doubt. With this background in view and in the light of these general features, the evidence adduced in the case has to be examined.

Alleged Material Irregularities.

9. Next adverting to the alleged material irregularities, practically there are only two irregularities which are much relied upon by the petitioner. The first is that the polling in booth No. 1 at Ajjampur commenced at 8·25 a. m. on 4th January 1952 on account of some confusion in the polling booth with the result many voters went away without exercising their franchise. The second is that the seals affixed to the polling boxes of this booth were not in tact

and this circumstance also has materially affected the result of the election, and these matters relate to issues 1 and 2 in the case. As both these questions relate to the same booth and as they are closely connected they may be considered together. In this connection it is contended by the learned counsel for the 1st respondent that though polling might have commenced in the polling booth actually at 8·25 a. m. some of the preliminaries such as giving the indentification slips had commenced at 8 a. m. and even earlier and the polling booth practically comprises the entire area where the Patel or the Shanbhogue would sit and give the indentification slips and it is therefore urged that there has been no material infringement of any rule. On the other hand, it is contended by the learned counsel for the petitioner that the preliminaries referred to do not at all come within the purview of the term "polling" and the space where the Patel or the Shanbhogue or otherpersons are per mitted to sit and issue the identification slips will not come within the ambit of the word "polling booth" and it is therefore urged that there is absolutely no force in the contention of 1st respondent. The learned counsel for the 1st respondent has not cited any specific authority in support of this contention and further even according to the common parlance it may be said that the term "polling booth" is practically confined to the place where the polling boxes are kept. P.W. 17 the Presiding Officer of the said Polling Booth at Ajjampur, states that the polling actually commenced at 8-25 a.m. on that day. P.W. 20 Ramaswamy who was said to be in that booth on that day states in the examination in-chief itself that voting boxes for the election to the Parliament had been kept in a jumbled state in the compartment and he brought this fact to the notice of the Presiding Officer and it was then stated that the voting boxes of the Assembly had also been kept in a jumbled manner and for re-arranging them. some time was taken and hence voting commenced at 8-25 a.m. Whatever may be the reason, it is manifest from the evidence of P.Ws. 17 and 20 that the polling actually commenced at 8-25 a.m. in that booth on that day. though the concerned authorities had notified that the polling in that booth also had to commence at 8 a.m. It is laid down in Section 56 of the Representation of the People Act, 1951 that the appropriate authority shall fix the hours during which the poll will be taken and that the hours so fixed shall be published in such manner as may be prescribed; and it is further stated in this Section that the total period allotted on any one day for polling at an election in a Constituency shall not be less than 8 hours. It is stated by P.W. 17, the Presiding Officer, that the closing of the poll was 5 p.m. and he closed at that hour, and there is an interval of one hour and the polling was therefore not for full 8 hours but only for 7 hours and 35 minutes in that booth. Thus there has not been due compliance of Section 56 of the Act. In this connection law as enunciated by various text writers and the relevant decisions may be referred to. In a case reported at page

226 of the Indian Election Case by H. S. Doabia Volume II, it is observed that where the polling began at the luncheon time instead of 9 a.m. the change in the timing was immaterial unless the result of the election was materially affected. At pages 575 and 576 of Indian Elections by Sen and Poddar 1951 Edition, it is observed as follows:—The procedure adopted at this polling station resulted in the commission of two irregularities, the first that there was no polling at all between 8 a.m. and 4-30 p.m. and the second, that the polling was continued after the prescribed closing hour up to 10 p.m. These irregularities by themselves do not vitiate the election altogether. This would happen only if the result of the election was materially affected thereby. According to the petitioner, the first irregularity resulted in the loss of a number of votes by him, because his voters who had come to the polling station early had left without voting as they got tired of waiting and they were not sure if their votes would at all be taken. Serfraz Hussein (P.W. 20) who is a zamindar and pays Rs. 800 as land revenue has stated that 40 or 50 voters of the petitioner left the polling station after waiting till the evening. Babu Shiv Charan Lal (P.W. 42) who is a law graduate and pays Rs. 700 as land revenue has also stated that 40 or 50 voters of the petitioner left without voting .....but in our opinion it would not materially affect the result of the election. Practically the same principles are enunciated at page 534 of Election Cases by Hammond. At best, according to the decisions referred to above, the late starting of polling by itself will not vitiate the election, but the election may be vitiated if on account of such late starting the result of the election has been materially affected. How far the result of the election has been materially affected is practically a question of fact which has to be decided in the light of the evidence adduced in the case. In this connection it may be stated that the difference between the votes secured by the petitioner and the 1st respondent is only about 34. P.W. 67 Yettappa, P.W. 68 Deveeranna, P.W. 69 Beekchand P.W. 70 Subbannachar, P.W. 71 Deveerachar, P.W. 72 Siddoji, P.W. 73 Thimmanna, P.W. 74 Laxman Rao, P.W. 75 Sanna Nanjiah, P.W. 76 Doddiah; P.W. 77 Bheemaji Rao, P.W. 78 Rama, P.W. 79 Hanumantha Rao, P.W.80 Siddalingappa, P.W. 81 Ananda Rao, P.W. 82 Ugrappa, P.W. 83 Kotappa, P.W. 94 Ramadas, P.W. 95 Devoji Rao, P.W. 96 Hanumanthappa son of Shankarappa, P.W. 97 Hanumanthappa, son of Doddiah, P.W. 98 Rama Rao, P.W. 99 Laxman Rao and P.W. 100 Ranoji Rao depose that they all had come to the polling booth in question earlier than 8 a.m. and that they had taken identification slips also and that though they waited till about 8-15 or 8-20 a.m. the polling did not commence with the result they left the polling booth as some of them wanted to catch the train for attending the shandy at Shivane and other P.Ws. also are said to have gone away on account of their urgent work. It is stated by the above P.Ws. that they wanted to give their votes to the petitioner.

It is contended by the learned counsel for the petitioner that there are absolutely no material to discredit the testimony of these P.Ws. On the other hand, it is urged by the learned counsel for the 1st respondent that no witness list has been filed by the petitioner and even though he requested the learned counsel for the petitioner to furnish the names of the witnesses whom he is going to examine at least a day earlier, he did not do so and he was therefore very much handicapped in cross-examining these P.Ws. Having regard to the circumstances of the case, this contention is not altogether without any force. It is further contended by the counsel for the 1st respondent that what the petitioner wants to establish by the examination of these P.Ws. is that these P.Ws. would have voted in favour of the petitioner in case the polling was commenced exactly at 8 a.m. and the evidence of this type is not at all admissible according to Election Law. It is further urged on the 1st respondent's side that if in fact so many voters had gone away without exercising their franchise on that day, it is least likely that the Congress volunteers or any other Congress authorities would have failed to bring it to the notice of the concerned authorities particularly when there was a regular Congress Office at Ajjampur, and inasmuch as no complaint whatsoever seems to have been preferred to the concerned authorities about the voters having gone away in that manner, no weight whatsover can be attached to the testimony of these P.Ws. It is also further contended that as borne out from the evidence of these P.Ws. they were practically in mortal hurry to go away for attending to their work and even assuming that all these P.Ws. and many other voters had come there and if polling had actually commenced at 8-20 a.m. and even if one minute's time is allotted to a voter even then it would take about half an our for recording the votes of about 30 persons and if all these P.Ws. were eager and anxious to catch the train by and leaving the polling booth at 8-15 or 8-20 a.m. it would not have been possible to record the votes of these P.Ws. even if polling has actually commenced at 8 a.m. It is also further contended that none of these P.Ws. have produced any identity cards to show that they had actually gone to the polling booth to exercise their votes on that day. It is therefore urged that the evidence of these P.Ws. is highly bristled with intrinsic improbabilities and no weight whatsoever can be attached to their version. It is borne out from the evidence that the Congress had maintained an office at Ajjampur during the election period and none of the Congress authorities seem to have complained to the concerned authorities about many of these voters having gone away without exercising their votes on that day on account of late commencing of the polling. Further as seen from the evidence of these P.Ws. they seem to have waited only for about 15 or 20 minutes after 8 a.m. and they are alleged to have left the polling booth afterwards. It is further contended by the counsel for the 1st respondent that there was practically no shandy on that day at Shivane and this circumstance

also affects the version of these P.Ws. On the other hand, it is contended by the counsel for the petitioner that the shandy at Shivane was not prohibited on that day and the shandy did take place on that day. Both sides have tried to adduce some evidence regarding this matter. Even assuming that the shandy did take place at Shivane on that day inasmuch as none of these P.Ws. have produced any identity slips to show that they did actually take identity slips for the purpose of exercising their votes and also as it would take at least half an hour or more if all of them wanted to exercise their votes and if they were anxious to go away so urgently on their particular errands, it would not at all have been possible for all of them to exercise their votes before 8-20 or 8-25 a.m. even assuming that all of these P.Ws. have gone to the polling booth on that day. On the whole the evidence of these P.Ws. seems to be bristled with intrinsic improbabilities particularly as it may not be difficult to secure a testimony of this nature. Moreover, the petitioner himself has not been examined in the case. As many as 105 P.Ws. are examined on the side of the petitioner, and afterwards the learned counsel for the petitioner stated that the petitioner is not personally aware of many of the matters and he would choose to examine the petitioner if necessary after the 1st respondent adduced evidence on the recriminatory petition, and subsequently the learned counsel for the 1st respondent did not press the recriminatory petition and he did not therefore adduce any evidence regarding the recriminatory petition with the result the petitioner has not been examined in the case at all. If the petitioner had been examined some light would have been thrown as to how he came to know about these P.Ws. and whether petitioner himself had approached these P.Ws. to secure their votes or whether he had done so through any of his agents. In the absence of the evidence of the petitioner, it has to be said that the evidence of these P.Ws. cannot be given any weight. Practically 24 witnesses have been examined on this matter and even if more P.Ws. had been examined regarding this practically the same observations would apply. Moreover, it is not the quantity of evidence that has to be taken into consideration and every case practically depends upon the quality of evidence. Viewed in any way little or no weight can be attached to the testimony of those P.Ws.

10. Next adverting to the use of the damaged paper seals for the ballot boxes in this polling booth and which practically relates to the 2nd issue, it is contended by the counsel for the 1st respondent that on the day of counting, the Presiding Officer was also present and he explained the circumstances under which he had to use the paper seals for the ballot boxes and all the contesting candidates including the petitioner who were then present were satisfied with the explanation of P.W. 17, the Presiding Officer and thereupon the counting was commenced and Ext. II is the statement recorded before the counting was commenced and it is stated that all the

candidates including the petitioner have signed Ext. II and Ext. II (a) is the signature of the petitioner. The relevant portion in Ext. II is as follows :—'We have got the boxes opened in our presence and we are satisfied that there has been no foul play. We have therefore no objection to the votes of these boxes being counted in the prescribed manner. These boxes had been re-sealed in our presence and may be taken up for counting each in its turn". Again, no evidence whatsoever has been adduced to show that after these boxes were sealed in the polling booth and before they were opened in the Taluk Office where the counting took place they had been in any way tampered with. In the light of this, and in view of Ext. II to which the petitioner is also a party, it has to be said that there is no force in the contention that the use of the paper seals for these ballot boxes had in any way materially affected the result of the election. Further if the petitioner who is apparently a party to Ext. II had been examined in the case some light would have been thrown on this matter. It is further contended by the counsel for the 1st respondent that the petitioner is estopped from putting forward the present plea and inasmuch as the petitioner is also a party to Ext. II he would be estopped from taking this plea as this is practically a question of fact. On the whole, the evidence adduced on the side of the petitioner does not at all show that the alleged irregularities materially affected the result of the election. In the result, I hold issues 1 and 2 against the petitioner.

Alleged Corrupt Practices.

11. Next adverting to the alleged corrupt practices it is the case of the petitioner that the first respondent had committed several corrupt practices which will vitiate his election. The corrupt practices alleged by the petitioner are as follows :—

(i) It is stated that the first respondent hired and procured a motor bus which was a service bus running between Tarikere and Hiriyur and belonging to one Ahmed Jan and it was further averred that this vehicle was not used for doing its usual trip but did many trips on the election day for bringing voters to vote for the first respondent;

(ii) The first respondent is said to have taken the assistance of a number of Government servants, in particular that of his son-in-law S. Durgappa and Patel Parameswarappa of Basavapura to further the prospects of his election.

(iii) It is next stated that there was a systematic appeal to the electors through the handbills not to vote to the petitioner on the ground that the petitioner belonged to a particular organisation which was represented to be interfering with Hindu Religion, temples, etc. and it is further averred that this respondent through his agents influenced several voters to vote for himself and not for the peti ioner by fanatic appeals and by using the name of Manjaiah Heggade of Dharmasthala and exploiting the feelings of reverence of several

Hindu voters of the said gentlemen and the seat of worship to which he belonged and it is further averred that these appeals were not only made by wide publication in the form of handbills but also through the extensive use of loud speakers at important gatherings where the voters would congregate. The petitioner, therefore, states that this respondent incurred disqualification of the membership by reason of the illegal practice in bringing out the hand bills which do not bear on the face of them the names and addresses of the publishers.

(iv) The next corrupt practice alleged by the petitioner is that the first respondent had procured some votes by getting other persons to vote in the name of the real voters or in the name of the deceased persons who are in the voters list. And the petitioner further avers that but for all these circumstances the first respondent would not have secured so many votes.

(v) It is further stated by the petitioner that on 28th January 1951 at Abbinaholalu of Sivani Hobli, this first respondent arranged for a grand dinner party in his friend's house and promises were taken from several voters who were fed on that day.

(vi) It is further averred by the petitoner that the election expenses furnished by the first respondent are false in material particulars inasmuch as the amounts incurred by this respondent in connection with the several motor cars and vans which he had engaged for the purpose of election and also the petrol charges and hotel charges incurred by this respondent for feeding the several voters and several other items have not been included in the election expenses.

12. Before adverting to the evidence relating to the above alleged corrupt practices, some general principles relating to the onus may by set out. It is contended by the learned counsel for the contesting first respondent that the issues relating to the alleged mal-practices are practically criminal in nature and it is for the petitioner to conclusively establish all the alleged corrupt practices beyond reasonable doubt, inasmuch as the first respondent is practically in the analogous position of an accused so far as matters relating to corrupt practices are concerned. In India Election Cases by Doabia Vol. II at page 269, it is observed that the standard of proof required to prove a corrupt practice is the same as in criminal cases. Again at page 48 and 49 of the same volume it is observed as follows: "The principles to be applied in deciding the question of personation should be those which are applied in the trial of criminal case, since it is well settled that the trial of an election petition is a quasi-criminal trial. That being so, it becomes necessary to regard the personator who are the main witnesses, as accomplices in the corrupt practice of personation and it is settled law that the statement of an accomplice cannot be accepted unless it is corroborated in material particulars by independent evidence. The statement of the thumb impression expert may corroborate the statement of the personator regarding the fact that he voted in the name of the other

person. On the point of agency, however, there should be again the independent evidence to corroborate the statement of the personator in material particulars". Again at page 529 of Indian Election Cases by Sen and Poddar, it is observed as follows: "Suspicions, however strong, cannot take the place of proof. It is well established that the standard of proof required in the matter of corrupt practice is the same as that in the case of a criminal charge". In the light of the above observations of the learned Authors, it has to be said that the standard of proof required in the case where corrupt practices are alleged is the same as that in the case of a criminal charge. Keeping this fact in view, the evidence adduced in the case regarding the alleged corrupt practices has to be examined.

13. I shall now deal with the various corrupt practices in the order mentioned above. First taking up the question of the service bus which the first respondent is alleged to have hired and procured from one Ahmed Jan for conveying the voters to the booth at Ajjampur, the petitioner relies on the testimony of P.Ws. 1,2,24,25,26,27,86,95 and R.W.5. besides some exhibits. P.W. 1 who was the Presiding Officer of Sollapur Polling Booth deposes that on 4th January 1952, after about 2 p.m. a bus came and stopped at a distance of a furlong from the polling station and some voters got down and they came direct to the polling booth and took their voting papers after getting themselves identified and about the closing time some bus came for the second time and stopped at the same place and he sent words that if they had come for voting they might come and vote as otherwise the polling station would be closed, and has come near the polling station, got themselves identified and took the voting papers and voted. He further avers that atleast there were 20 persons in the bus on each of the occasions when it came to the place. P.W. 2 is the Police Daffedar who was attached to the Sollapur Polling Booth at the time of the last elections, and he also states that some voters came by bus that day and that service bus belongs to a Mahamadan and that bus came near the polling booth twice on that day and he had gone to the place on those two occasions and on each of these two occasions there were passengers in the bus to its full seating capacity and its seating capacity was above 30 and below 40 and there were two placards attached to the bus, one on the right side and the other on the hind portion, and it bore on it the symbol of a hut which symbol is that of the 1st respondent. He further avers that according to the rules, busses should not come near the polling booth and therefore he of his own accord went near the place where the bus had halted and he checked the bus and he was shown a permit by a Mahamadan driver who was driving the bus. P.W. 3 Clerk of the District Office, Chikmagalur, has spoken about Ext.A which is the application for obtaining bus permit for running a bus for two trips to and fro Gorapur and Sollapur on the election day. P.W. 24 Hanumappa who is the Patel of Gowrapur and who had been asked by the Revenue Inspector to issue identification slips to the

voters at Sollapur polling Booth on the election day states that Ahmed Jan has been running two service busses, one known as the H.A.S. Bus Service and the other as the National Bus Service, and Imam Hussein, father of Ahamed Jan, and Abdul Jaleel, Sheriff Jan, the elder and younger brothers of Ahamed Jan, have been living together in the same family and the members of their family are entitled to record 8 votes and Ext. T20 (*a*) are the names of the 8 voters of this family. He further states that Imam Hussein did not come to the polling booth for recording his vote and Abdul Jaleel came to the polling booth at about 11 or 11-30 a.m. and other two persons Ahamed Jan and Sheriff Jan came to the polling booth between 3-30 and 4 p.m. for recording their votes. He next avers that while he was attending to the work of issuing identification slip, a bus came and stopped at a place where he was sitting and that bus came to the spot twice, and it was about 3-30 p.m. for the first time that it came and as soon as the bus came there Ahamed Jan came and called him and asked him to come near the bus to issue identification slips and he went to the bus and issued the said slips and there were about 30 or 35 persons in the bus then and he gave the identification slips to all of them. He next states that the said bus came for the second time at about 4-30 p.m. and Ahamed Jan and Sheriff got down from the bus and came to him and took him to that bus for issuing identification slips and there were then also 35 persons and he issued identification slips to all of them. Lastly he avers that the 1st respondent had come to the polling booth at about 11 or 11-30 a.m. and told him that some muslim voters had come and he then asked him to issue identification slips to the muslim voters as they had to go and attend *namaz* and he accordingly issued identification slips to them and he further states that the aforesaid bus bore on it placard having the name of the 1st respondent and his symbol which was a hut. P.W. 25 is Rudrappa who is said to have gone to the polling booth at Sollapur by the H.I.S. Bus at the instance of one Nanjunda, a cleaner of the bus. He states about 25 or 35 gersons including himself were sitting in the bus and the bus was fully loaded and the bus was made to stop at a halla at a distance of half a mile from Sollapur ; and after the bus stopped there he and other persons who were in the bus got down and walked down to the polling booth and that was a bus which was usually plying between Tarikere and Hiriyur. He further states that the said bus proceeded to Antharagatta and returned to Sollapur and stopped at the gate leading to Sollapur and after recording his vote he sat in the very same bus after it returned from Antharagatta and he went back to his village. P.W. 26 Dodda Thimmappa who is also a resident of Gowrapur is said to have gone to Sollapur booth on that day in his own bullock cart and he states that he came to know from some people that some persons came by bus and those who came by bus told him that they travelled by H.I.H. Bus. P.W. 28 Giriyappa deposes that he had given a complaint to the Deputy

Commissioner, Chickmagalur, alleging that the people of H.I.H. Bus Service had run the bus to the polling centre at Sollapnr contrary to election rules and Ext. DD is the complaint given by him and the Revenue Inspector had come to make enquiries in respect of the said complant and the Revenue Inspector told him that it is recorded in the mahazar that the said bus had done 5 trips and asked him to attest the mahazar and he attested it at about 5 p.m. and he further states that he did not read the mahazar, and he further avers that the said Service Bus went on 3 trips in the morning and 2 trips in the afternoon. P.W. 28 Sannahanumaiah who is a resident of Sollapur states that at about 11 a.m. when he left the house for Shivane shandy and was going near Ganganahalli he saw H.I.H. Bus coming in the opposite direction and that bus did not come to Sollapur at all and when the bus reached that halla it was made to stop there and the persons who were in the bus got down and he questioned Manjanna, the driver of the bus, as to why the bus had come there and he told him that he and others had come there to record their votes in the polling booth at Sollapur. P.W. 86 Halappa who is a resident of Gowrapur deposes that the 1st respondent had come to his village Gowrapura about 3 or 4 days prior to the election and he asked them to vote for him and Dr. Ghouse Sab, Ahamed Jan of Tarikere and some others had come to Gowrapura on that occasion and he further states that he did not go from Gowrapur to Sollapur to record his vote as he could not find accommodation in the bus and that the bus belongs to H.A.H. and the bus came to Gowrapur at about 8 or 9 a.m. for the first time and left for Sollapur, and for the second time the bus came to Gowrapur at 11 or 12 NOON, and then also he could not secure a seat in the bus as it was full and he did not go to Sollapur in the afternoon for recording his vote. P.W. 92 Nanjundappa was said to be a cleaner working in the H.I.H. Bus Service the owner of which was Imam Hussain Sab. He states at the time of the last elections he was working as a cleaner in that bus and that one Manjappa was the driver of the said bus and one Nagaraj was the conductor. He was working as a cleaner for about 8 or 9 months prior to the election. He states that on Thursday, a day prior to the election his employer had sent word to the agent at Tarikere through the driver and conductor and also to him to issue tickets only to passengers travelling between Tarikere and Ajjampur and not beyond Ajjampur and also to 4 passengers travelling from Antharagatta to Tarikere, and on the following Friday, *i.e.*, on the election day they went by the bus to Ajjampur and afterwards they went to Gowrapur. And after he cleaned the bus Ahamed Jan asked him to bring the voters for being conveyed in that bus to Sollapur, and the said bus left Gowrapur at 10-30 a.m. for Sollapur and he too travelled by the bus to Sollapur from Gowrapur and there were about 20 to 30 passengers who were all males and the bus was stopped near Gangammanahalla and Ahamed Jan asked the voters to go to polling booth and thereafter

the bus was taken to Antharagatta and from Antharagatta the bus came again to Sollapur gate and by that time the persons who had gone to Sollapur to exercise their votes had returned and were waiting and they were all brought back to Gowrapur by the bus; and afterwards the bus again took those who were waiting there for recording their votes and then proceeded to Sollapur and there were 30 or 35 persons in the bus when it proceeded to Sollapur for the second time. He further avers that when the bus was proceeding to Sollapur the 1st respondent came there in a car from Begur side and alighted near the gate and he and Ahamed Jan conversed for some time and then the bus proceeded to Gangammanahalla and there the people in the bus got down, and the bus remained there till all those persons returned after voting and thereafter they were taken to Gowrapur in that bus. He next avers that the bus returned to Gowrapur at about 2 p.m. after doing the second trip and thereafter his employer asked the driver and conductor to go to Ajjampur to take their meals saying that he would himself drive the bus as he wanted to take the gosha ladies. In the afternoon the said Ahamed Jan and his brother came in the bus and drove the bus and took the gosha ladies and he too had gone by the bus and about 35 persons travelled by the bus and most of the passengers were muslim women and the bus went and stopped near the polling booth in Sollapur Village and the Patel of the village came near the bus and issued chits to the passengers who were inside the bus. After the passengers exercised their votes they were brought back to Gowrapur by the same bus. And afterwards the bus made another trip to Sollapur with fresh passengers and there were about 40 women passengers in that bus and then also the Patel came and issued chits to the passengers who were inside the bus and after the passengers exercised their votes, they were brought back to Gowrapur. Lastly he states when the bus did the second trip when one Hanumanna and another Marulappa who were sitting in the bus were asking the passengers to vote for the 1st respondent. He also states that Dr. Ghouse used to come to Gowrapur 2 or 3 times a day as Dr. Ghouse and his employer were on very friendly terms. R.W. 5, Govindappa who is a resident of Sollapur and who had gone near the polling booth at Sollapur, states, that no bus came to Sollapur before 12 NOON and at about 2-30 p.m. or 3 p.m. one bus came there and there were 5 or 6 muslim persons in that bus and the same bus came to Sollapur at about 4-30 p.m. when there were 7 or 8 muslim women in the bus and they were observing gosha. This in brief is the evidence adduced on the petitioner's side regarding the trips made by the H.I.H. Service Bus on the election day. According to these P.Ws. the bus had made four trips, two in the morning and two in the afternoon and in the morning trips the bus was made to stop near the halla and from there the passengers had to go to Sollapur and after recording their votes they had to get back to the halla and then go back to their village by the same bus. The reason

as to why the bus was made to stop near halla (ಹಳ್ಳ) during the morning trips is said to be that the bus had permit for two trips only in the afternoon and that too Ahamed Jan had to take only his family members to the polling booth by the bus and it is further stated that there were only eight adult persons who were entitled to their votes in that family. But, on the other hand, even in the afternoon the bus is said to have contained from about 20 to 30 or 35 passengers at each time. It is stated by the learned counsel for the petitioner that the two trips which this Service Bus had made in the morning are practically clandestine trips inasmuch as the bus had no ostensible permit either and that in the afternoon though Ahamed Jan had obtained permit for taking his family members to the booth he had misused the same and taken the bus twice to the polling booth and at each time there were about 20 to 30 persons in the bus, and it is further contended by the petitioner's counsel that Ahamed Jan was practically acting as the agent of the 1st respondent and that the 1st respondent has thereby committed a major corrupt practice within the meaning of Section 123 of the Representation of the Peoples Act inasmuch as he has procured the use of H.I.H. Service through Ahamed Jan. On the other hand, it is contended by the counsel for the 1st respondent that the evidence of these P. Ws. is highly improbable besides being interested and the evidence of P.Ws. regarding the morning trips by the bus is least convincing and no weight whatsoever can be attached and even though the bus might have made two trips in the afternoon the 1st respondent is not in the least responsible for the same and even assuming that the bus contained the placards of the 1st respondent until and unless it is shown that the 1st respondent or his agent was responsible for the Existence of those placards no inference whatsoever could be drawn that the bus had made the trips to the polling booth at the instance of the 1st respondent or with the connivance of the 1st respondent, and it is further contended that during election times even some mischievous persons or persons who might be practically working against the opposite candidate might throw some placards or tie some placards to any vehicle with a view to create impression that the said bus was running for and on behalf of the candidate. It is therefore urged that until and unless clear and cogent evidence has been adduced to show that the 1st respondent either hired or procured the said bus or that he atleast connived at, the 1st respondent cannot at all be held responsible for the afternoon trips alleged to have been made by the bus in question. It is seen from the evidence of P. Ws. 1 and 2 as well as from the testimony of R. W. 5 that a bus had come near the polling booth twice in the afternoon on that day, but the essential question for consideration in the case is whether the 1st respondent is directly or indirectly responsible for the trips alleged to have been made by the bus on that day. P. W.

92 Nanjundappa who was said to be working as a conductor in the bus since some months prior to the election has spoken about both the morning as well as the afternoon trips which this bus had made on that day. P. Ws. 1, 2 and 24 have only spoken about the two afternoon trips which this bus had made on that day. It is only P. Ws. 25, and 86 who have spoken about the morning trips of this bus. P. W. 26 Dodda Thimmappa has not specifically spoken about any trips alleged to have been made by this bus on that day and he immediately states that he heard some people came by bus and some by walking and that those who came by bus travelled from H. 1. H Bus Service and as seen from his evidence he himself is said to have gone by his own bullock cart to Sollapur on that day at about 10 A.M. Practically he does not seem to have any personal knowledge about the running of this bus on that day and no weight whatsover can be attached to his testimony. P. W. 27 Giriyappa who has preferred the complaint Ext. DDD simply states that in the morning the said bus did three trips between 7.30 A.M. and 12 NOON and in the after-noon the said bus did two trips between 2.30 and 4.30 P.M. In his cross-examination he states that he went to the polling booth at Sollapur after 4 P.M. on that day and he did not go to Sollapur by bus and the owner of the bus sent word to all of them to go by the bus to record the votes at Sollapur and yet he did not go by that bus and the said bus had done five trips by the time he went to Sollapur. Seeing the evidence as a whole, it cannot at all be said that he has been personally aware of the trips alleged to have been made by the bus on that day, and the utmost that could be gathered from his testimony is that he and some other villagers had preferred a complaint to the authorities regarding this bus and subsequently the Revenue Inspector had come and drawn up the mahazar. This witness is said to be the Chairman of the Village Panchayet at Gowrapur and yet states that he signed the mahazar drawn up by the Revenue Inspector without knowing its contents. In this connection, he further states in this cross-examination that the Revenue Inspector, at the time of taking signatures, sent for the other signatories and at after they assembled there, the Revenue Inspector assured them that the mahazar contained what all he stated and he did not know the contents of the mahazar even subsequently. According to other P. Ws. the bus is said to have made four trips-two in the morning and two in the afternoon-but according to the version of this witness, the bus is said to have made five trips, and further he does not seem to have any personal knowledge about the several trips alleged to have been made by that bus inasmuch as he has not stated about the persons who were travelling by the bus at each trip and other particulars. On the whole much weight cannot be attached to the testimony of this witness either. Next adverting to the testimony of P. Ws. 25 and 86, who have spoken about the bus having made two trips in the morning, P. W. 25 in his cross-examination states as follows :— " The cleaner of the bus said aloud

in the village that the bus was going to Sollapur and that persons who want to go to Sollapur to record their vote might go in that Bus. After he said so, many people came and sat in that bus. By the time the bus went to Antharagatta and returned, I had voted and returned". Further on in his cross-examination, he states as follows :— "All the 25 or 30 persons returned after recording their votes to that spot. I do not know whether he stayed away there or left that place when we left the polling booth after recording our votes. I did not talk to him. I do not know many of the persons who spoke with him". P. W. 86 states that he did not secure a seat in the bus in both the morning trips as the bus was full and he did not go to Sollapur in the afternoon for recording his vote. He further avers that after the 1st respondent succeeded in the elections, he had come to Gowrapur Village along with others and the 1st respondent and others went to the house of the said Mahamadan who has been running a tobacco mandi at Gowrapur and H.I.H Service belongs to that Mahamadan. In his cross-examination, he states as follows :—"As I had other work, I did not go to Sollapur to record my vote in the afternoon of that day. I did not go to the house of that Mahamadan when the 1st respondent and his people went to that house. They all went into his house to take tiffin. I saw them going into that house. I did not tell the petitioner uptil now about the 1st respondent and his people having gone into the house of that Mahamadan and taking tiffin". It is contended by the learned counsel for the 1st respondent that little or no weight can be attached to the evidence of the P. Ws. 25 and 26 as their version is bristled with intrinsic improbabilities. According to P. W. 25, the cleaner of the bus is said to have openly cried out in the village asking the people to get into the bus to go to Sollapur for the purpose of recording their votes. According to this witness, about 20 or 30 persons are said to have gone by the bus and he has not given out the names of any other persons who travelled along with him on that day. Further, except his bare version there are no other materials to show that any other persons of his village or any other village had gone with him to the polling booth on that day to give their votes. There are no materials to show who those 25 or 30 persons that travelled by the bus on that day are. So far as P. W. 86 is concerned, he is said to have failed to secure a seat in both the trips of the morning bus and he has not stated that any persons on behalf of the 1st respondent had travelled by the bus. Moreover some important could have been attached to this witness if at least he had gone by the bus in any of the trips. Moreover, if he had really waited to secure seat in the bus on booth the occasions, it is least likely that he would have failed to go to the booth at least in the afternoon to exercise his vote. On the other hand, admittedly he has not gone to the polling booth at all in the afternoon on the ground that he had other work. Again his evidence does not disclose what other work he had in that afternoon. On the whole, as

contended by the respondent's counsel, the evidence of P. Ws. 25 and 86 is bristled with improbabilities and seeing the evidence of P. W. 25 as a whole, it appears to me even doubtful whether he had really gone by the bus and exercised his vote on that day. Moreover, even assuming that the bus in question had really made two trips in the morning there are no sufficient materials whatsoever to connect the two trips alleged to have been made by the bus with the 1st respondent or his party people. Viewed in any manner, much weight cannot be attached to the testimony of P. Ws. 25 and 86. Next adverting to the evidence of P. W. 92, it is contended by the learned counsel for the 1st respondent that this witness is practically interested and that his version is also bristled with intrinsic improbabilities and little or no weight can be attached to the evidence of this witness either. According to this witness, one Hanumanna and another Marulappa were in the bus and they were asking those in the bus to vote for the 1st respondent. This witness in his cross-examination states as follows :—" I cannot mention all the names of persons who travelled in the bus when it made the first trip. So also I cannot mention the names of the persons who travelled in the subsequent trips. The bus was taken to the houses of women passengers and there they boarded the bus using cloth as screens. After those women passengers sat in the bus, it was not possible for outsiders to see them ". Further on in his cross-examination he states as follows :—" The said Ahamed Jan was maintaining accounts but I was not signing any entry made therein. The driver and the conductor used to sign in that book whenever they took their salary. I gave up service under Ahamed Jan as I had to do my own agricultural work. I have not informed the petitioner any of the details given by me today. The petitioner brought me today morning to give evidence. The petitioner asked me to depose to facts known to me since I was in the bus. I said I would depose to the facts known to me. I did not know before I entered the witness box that I had to depose to events which had taken place on Wednesday, Thursday and Friday. The said Ahamed Jan is even now in Gowrapur. I came to know that I had to give evidence for the petitioner two or three days ago. My uncle Giriyappa told me so, day-before-yesterday. My uncle asked me to depose what I know". It is contended by the counsel for the 1st respondent that in the absence of any clear and corroborative evidence to show that this witness was actually working as a cleaner in the H.I.H. Service Bus, no weight whatsoever can be attached to his version and it is further contended that this witness is deposing to the facts practically at the instance of the petitioner and the petitioner has not made any attempts to examine the driver or the conductor of the bus and even Ahmed Jan and in the absence of their testimony no weight whatsoever can be attached to the version of this witness. It is seen from the cross-examination of this witness that Ahmed Jan was maintaining accounts and he was not signing any entry made

therein though the driver or conductor used to sign in that book whenever they took their salary. There is no reason assigned as to why the name of this witness was not found in the account book if in fact he was also an employe under Ahmed Jan. Again according to this witness one Hanuma and another Marulappa of Ajjampur were said to be sitting in the bus and asking those persons who were in the bus to vote for the 1st respondent and there are no materials to show who those Hanumanna and Marulappa are and no attempt has been made to examine any of those persons. Seeing the evidence of this witness as a whole, the contentions of the respondent's counsel have considerable force and this witness also does not appear to be in any way quite disinterested and much weight cannot be attached to his version either, particularly in the absence of the examination of the driver or the conductor or of even Ahmed Jan. According to the evidence of P. Ws. 1, 2 and 24, it is manifest that the bus had come near the polling booth on that day afternoon twice and it is further seen from the evidence of these P. Ws. that on each occasion the bus contained about 20 to 30 passengers. Again it is stated by P.Ws. 2 and 24 that the bus contained the placard of the 1st respondent. Section 123 of the Representation of the Peoples Act relates to major corrupt practices, and Clause (6) relates to the hiring or procuring of any vehicle or vessel by a candidate or by his agent or by any other person with the connivance of the candidate or his agent for the conveyance of any elector to or from any polling station. In view of the fact that little or no weight can be attached to the testimony of P. Ws. 25, 86 and 92, it cannot definitely be said that the bus in question had made any trips in the morning. No doubt as borne out from the evidence of P.Ws. 1, 2 and 24, the bus had made two trips in the afternoon. And it is further seen from their evidence that on each occasion the bus contained 20 to 30 persons. Inasmuch as one Hanuma and another Marulappa who were alleged to have been sitting in the bus and asking the persons to vote for the 1st respondent have not been examined in the case and as there are no materials whatsoever to show that the 1st respondent had come near the bus in the afternoon or requested any of those persons to vote for him, it cannot at all definitely be said that the 1st respondent had hired or procured it. No doubt it is stated by P.Ws. 2 and 24 that the bus contained placard of the 1st respondent, and even assuming that this version of these PWs. is true from the mere circumstance that the bus bore any such placard it cannot at all be definitely said that the bus had been engaged by the 1st respondent or atleast that the 1st respondent had connived at the playing of the bus to the polling booth, particularly when there is no independent evidence whatsoever to show that the 1st respondent had anything to do with the bus affair. Further, according to section 99 of the Representation of the Peoples Act at the time of making an order under section 98, the Tribunal shall also make an order regarding the corrupt or illegal practices

committed at the election and the names of all persons who have been proved at the trial to have been guilty of any corrupt or illegal practice should be recorded. Practically according to the petitioner, Ahmed Jan the owner of the Bus in question is also said to be a party to this corrupt practice, and if infact Ahmed Jan was responsible for the plying of the bus near the polling booth, action has to be taken against him also in pursuance of Section 98 of the Act referred to above. But no attempt has been made on either side to examine Ahmed Jan as a witness. It is contended by the learned counsel for the petitioner that inasmuch as there are some materials that Ahmed Jan is a party to the alleged corrupt practice, the onus is shifted on to the 1st respondent to examine the said Ahmed Jan, and it is also further urged that even if an attempt is made by the petitioner to examine Ahmed Jan, he might not support his case and no purpose would be served by such an attempt. On the other hand, it is contended by the learned counsel for the 1st respondent that the 1st respondent is practically a stranger to said Ahmed Jan and there are absolutely no materials to connect the 1st respondent with Ahmed Jan and in view of these circumstances it is incumbent on the part of the petitioner to examine the said Ahmed Jan. As already observed the issues relating to the corrupt practice are in the nature of a criminal case and the standard of proof that is required is one that is necessary in the criminal case, and some authorities for this proposition have already been referred to. It is the petitioner who has come forward with the allegation that Ahmed Jan is a privy to this corrupt practice and in the circumstances Ahmed Jan would be a material witness, and if the petitioner had tried to examine this witness and if in fact he was really hostile he could have sought the permission of the Tribunal and cross-examined the witness and shown to the Tribunal how far the version of Ahmed Jan is probable and reliable. Further, I even suggested that Ahmed Jan might be examined practically as a Court witness and this suggestion does not seem to have found favour with my learned colleagues. At any rate, in the absence of the testimony of Ahmed Jan and in view of the fact that there are practically no materials whatsoever to connect the 1st respondent with Ahmed Jan or with the plying of the bus, it cannot at all be said that the petitioner has successfully proved beyond any reasonable doubt that the 1st respondent is responsible for this alleged corrupt practice. In the result, my finding is that the 1st respondent has not committed any such alleged corrupt practice.

14. The next major corrupt practice alleged by the petitioner is that the first respondent had utilised the services of his son-in-law Duggappa who was an employee in the Iron Works at Bhadravati and also of one Sri Parameswarappa, patel, for securing votes and it is, therefore, contended that the election of the first respondent is void on this ground also. On the other hand, it is contended on the side of the first respondent that his son-in-law Duggappa was only

employee in the Mysore Iron and Steel Works, Bhadravati and that he was not an employee in the Government of Mysore or in the Government of India within the meaning of clause 8 of section 123 of the Representation of People Act and it is also further urged that the evidence of P.Ws. regarding this matter is quite scanty and no weight whatsoever can be attached to this testimony. According to clause 8 of section 123 of the said Act, a person should be serving either in the State Government or in the Government of India and, even according to the petitioner, Duggappa, son-in-law of the first respondent was then an employee of the Mysore Iron and Steel Works at Bhadravati and subsequently he is said to have gone away to foreign country after securing some scholarship. The initial burden is upon the petitioner to show that an employee of the Iron and Steel Works at Bhadravati will come within the purview of clause 8 of section 123 of the Act. It is contended by the learned counsel for the petitioner that it is the Government of Mysore that have practically financed the Iron and Steel Works at Bhadravati and for all practical purposes, it is a Government concern. On the other hand, it is urged by the learned counsel for the first respondent that from the circumstance that the Government of Mysore are financing the concern, it cannot be said that all those persons who are practically working in the Iron and Steel Works will be employees of the Mysore Government and, it is further urged that several officers of the Mysore Government have been only lent to the Iron and Steel Works. Practically no authority or order of the Government has been furnished by the petitioner's counsel to show that employees serving the Iron and Steel Works at Bhadravati are also employees of the State Government. In the absence of this, it cannot at all be said that Duggappa, son-in-law of the first respondent was an employee within the meaning of clause 8 of section 123 of the Act. Even assuming that the services in the Iron Works at Bhadravati is deemed to be service within the State Government, it has to be seen how far the evidence adduced in the case establishes that Duggappa did really engage himself in connection with election work on behalf of the first respondent. The only P.Ws. who are examined on this circumstance are P.Ws. 61, 64 and 65. P.W. 61 Gangappa states that he went to the polling booth at Kemmangundi under the impression that he had to record his vote there and Duggappa, son-in-law of the first respondent, told him that he had to record his vote at Thanigebyle and hence he came to Thanigebyle and voted there and Duggappa was at a distance of about 100 yards at Kemmangundi. He further states that Duggappa was canvassing for the first respondent. This witness is said to be a resident of Sannakhan Estate and it is seen from his cross examination that the patel had told him that he had to record his vote at Thanigebyle and that he had been given a chit also to that effect about 15 days prior to the election and he is said to have lost that chit. Again it is borne out from his cross-examination that Thanigebyle is at a

distance of about three miles from his village. Further on in his cross-examination he states that though he knew, he had to record his vote in Thanigebyle, he had gone to Kemmangundi to see how election would go on there and he immediately states that he had gone there to record his vote in the polling booth at Kemmangundi, and he did not ask anybody where he should give his vote there and Duggappa voluntarily came to him and told him that he had to record his vote at Thanigebyle and he voted there. If in fact he knew that he had to record his vote at Thanigebyle, it is rather inexplicable as to why he should have all the way gone te Kemmangundi and then gone back to Thanigebyle to record his vote. Seeing the evidence of this witness as a whole, little or no weight can be attached to his version, inasmuch as it is bristled with inherent improbabilities. P.W. 64 S. Ramappa who was then the Revenue Inspector at Lingadahalli, deposes that in connection with the election he had been appointed to make lodging and boarding arrangement for the officers of the polling booths at Thigada Centre which is also known as Kemmangundi centre and he reached Kemmangundi at about 3 p.m. on 3rd January 1952, and slept in a room allotted to him in the official quarters of the Iron and Steel Works, Bhadravati and Duggappa, son-in-law of the first respondent also slept with him in that room on that night and that he was then working as a Probationer in the Iron Works, Bhadravati. He further states that the voters who had to record their votes there were the workers in the mines belonging to the Iron and Steel Works, Bhadravati. In his cross-examination he states that on the next morning he left that room and went away and that he did not see Duggappa again there. This witness does not speak anything about Duggappa's presence at Kemmangundi on 4th January 1952, and much less about Duggappa canvassing for the first respondent. P. W. 65 Halaiah deposes that Duggappa, the son-in-law of the first respondent and Shankar Rao were canvassing on behalf of the first respondent at the time of voting at Kemmangundi on 4th January 1952. It is contended by the counsel for the first respondent that this witness is in no way disinterested because the petitioner is hiring a lorry of this witness for carrying timber and this witness is getting a sum of Rs. 200 or Rs. 300 every year by way of hire. This witness, no doubt admits that the petitioner is hiring his lorry for conveying timber and every year on the average he gets Rs. 200 or Rs. 300 by way of hire from the petitioner. Again he states in his cross-examination, "I did not tell any one about this matter," but on that very evening I told the petitioner at Tarikere about Duggappa canvassing at Kemmangundi. Further, it is seen from the evidence of this witness that he had seen Duggappa at the time of his marriage and there are no clear materials to show that this witness had subsequently seen the said Duggappa before he met him at Kemmangundi. Seeing the evidence of this witness as a whole, he too cannot be said to be quite disinterested and his version also appear to be improbable. In the

circumstances, little or no weight can be attached to this witness. On the whole, the evidence adduced by the petitioner regarding this matter is quite unacceptable and there are absolutely no grounds to show that Duggappa did really canvass for his father-in-law, the first respondent.

15. It is next contended that the first respondent was utilising the services of patel Parameswarappa of Channapura in connection with election work and inasmuch as Parameswarappa is a patel within the meaning of clause 8 of section 123 of the Act and as particularly Parameswarappa was actively supporting the first respondent both prior to the election as well as during the course of election and even afterwards, the first respondent has committed a major corrupt practice within the meaning of clause 8 of section 123 of the Act. On the other hand, it is urged by the learned counsel for the first respondent that it is the petitioner who was utilising the services of the said Parameswarappa of Channapura and even in the recriminatory petition filed by this respondent the name of the said Parameswarappa finds a place in para 5 of the recriminatory petition and the version of the several P.Ws. that patel Parameswarappa worked for the first respondent is absolutely untrue. It has to be seen how far the evidence adduced on the side of the petitioner regarding this matter is probable and reliable. P.W. 52 patel Thammappa, P.W. 56 Marulappa P.W. 57 Veerachar, P.W. 84 H. M. Channabasappa, P.W. 87 Sivalingappa, P.W. 88 Gangappa and P.W. 89 Nagappa speak about the activities of patel Parameswarappa in connection with election work. P. W. 52 Thammappa deposes that Parameswarappa is the patel of Becharak village of Basavapura and is a resident of Channapura and Parameswarappa canvassed on behalf of the first respondent in Channapura village and he used to go to other villages also in the car of the first respondent for the purpose of canvassing and that he used to distribute handbills having the symbols of the first respondent. He further avers that Parameswarappa used to come to the polling booth at Baggavalli where he used to ask people to vote for this respondent. He next avers that in the month of November 1951, the first respondent had come to his village for the first time along with Sabjusab and Haralappa of his village and they all stated that the first respondent would stand for election and that people should vote for him. He next states that after the first respondent was declared duly elected, there was a procession of the first respondent in the bullock cart in the village and Sabjusab and Haralappa were seated with him and that patel Parameswarappa gave a dinner to the first respondent in his house in honour of the success of the first respondent. P. W. 56 Marulappa who is a resident of Baggavalli, deposes that before the commencement of the elections, the first respondent and the said Parameswarappa had come to his village and Parameswarappa asked him to vote for the first respondent. P. W. 57 who is a goldsmith at Baggavalli deposes that Parameswarappa and Tarikere Ramanna

and two others had come to his village to canvass his vote in favour of the person who had the symbol of a hut and that was said to be about four days prior to the election. P.W. 84 H. M. Channabasappa, the President of the Mysore District Board, states that about the last week of December 1951, he addressed a public meeting at Ajjampur and more than 300 to 400 people had gathered there and just when he commenced addressing the gathering, an attempt was made to create some disturbance at some distance and out of those he summoned the most vociferous of them and asked them the reason for creating the disturbance and out of those vociferous people about 3 or 4 persons came to him and questioned him as to why the Congress party should not make way for K.M.P. Party and also made certain allegations against the Congress party and then he prevailed upon them to let him know definitely the charges against the Congress party and he also enquired about them as to who they were and what they were and the most impressive out of them was one Parameswarappa. He then states that these 3 or 4 persons began to speak at the same time making allegations against the Congress party and that he asked them to put in writing the charges against the Congress so that he may give suitable replies, but they did not hear to his suggestion and afterwards he called upon the said Parameswarappa to address the gathering and that he would sit down and then those persons consented to put in writing the charges against the Congress and then they sent him some questions in writing for being answered and Parameswarappa questioned him individually on several points and he answered all of them. Lastly, he states that from the manner of the questions put by Parameswarappa, he presumed that he was the patel and even beforehand at the time of questioning he ascertained from him that Parameswarappa was a patel. P. W. 87 Sivalingappa deposes that about 15 days prior to the election, Channapura Parameswarappa had come to his village Baggavalli to do canvassing work for the first respondent two or three times and Parameswarappa asked them to vote for the K. M. P. party candidate and this witness is said to be a relation of the said Parameswarappa. P. W. 88 Gangappa deposes that in connection with election propaganda patel Parameswarappa had come to his village Kallasettihally and asked him to vote for the candidates of the K. M. P. party and that he told him that as his name was not included in the electoral roll he could not exercise his franchise. P. W. 89 Nagappa who is also a resident of Baggavalli deposes that about 15 days prior to the election patel Parameswarappa and Tarikere Ramappa had come to his village and stayed in the house of Angadi Thimmappa in Baggavalli and that he was working in the house of the said Angadi Thimmappa and that Parameswarappa had come to his village once prior to that occasion also and Parameswarappa asked him to vote for the first respondent and subsequently also Parameswarappa had come to the village twice and then also he asked them to vote for the first respondent. He further avers that Parameswarappa had come

even on the day of election and was standing near the polling booth in the Panchayet Hall and was asking people to vote for the first Respondent. Further P. Ws. 18, 29 and 63 also speak about some matters relating to Parameswarappa's activities. P. W. 18 Hanumanthappa who is said to have been running a cycle shop at Ajjampur deposes that he had hired the cycles for the first respondent from 9th December 1951 to 4th January 1952 as per Ex. FFF 1 for purposes of election at page 236 and C. Parameswarappa and two others have signed Ex. FFF1 on behalf of the first respondent and that he has written the entry showing Rs. 75 in Ex. FFF 2 and Govindappa, brother of the first respondent has paid that sum. P.W. 29 Yelloji Rao states that after the first respondent was declared successful in the election, he was taken in procession at Ajjampur and the moving procession was headed by Parameswarappa and Devendrappa who were wearing garlands. P. W. 63 Puttarudraiah deposes that he worked for the first respondent at the time of last election and he canvassed for the first respondent and he was going in a car for canvassing on behalf of the first respondent and about 60 or 70 persons were working on behalf of the first respondent in connection with election and after the first respondent was declared successful all the workers wanted to entertain the first respondent and in that connection a manifesto Ex. BBBB was circulated among the workers and it is said to contain the names of persons who had worked for the first respondent and he stated that the name of Channapura Parameswarappa also finds a place in Ex. BBBB and the said Parameswarappa has affixed his signature against his name. This in brief is the evidence adduced on the side of the petitioner to show that the first respondent was utilising the services of patel Parameswarappa in furtherance of his election work. According to the evidence adduced on the side of the petitioner Parameswarappa is said to have taken some part for canvassing on behalf of the first respondent even sometimes before election and even at the time of the election also he is said to have canvassed for the first respondent and again after the first respondent was declared successful, Parameswarappa is said to have headed the procession and he is alleged to have arranged a dinner also to the first respondent in honour of his success. In short, the contention of the petitioner is that patel Parameswarappa was an active worker on behalf of the first respondent and inasmuch as Parameswarappa is a Government servant within the meaning of clause 8 of section 123 of the Act, the first respondent has committed this major corrupt practice and, therefore, his election is void. The petitioner relies upon Ex. FFF 1 and Ex. BBBB to show that patel Parameswarappa was actively working for the first respondent. In this connection it is contended by the counsel for the first respondent, that if really Parameswarappa actively worked for the first respondent it is quite likely that the petitioner who had stood on the Congress ticket or any other prominent Congress people would have brought

it to the notice of the concerned authorities about the activities of patel Parameswarappa and inasmuch as no complaint whatsoever seems to have been preferred against the said patel Parameswappa either to the Amildar or to any revenue authorities, there is absolutely no force in respect of this contention and the evidence adduced by the petitioner regarding this matter cannot be given any weight. It is further urged that the said Parameswarappa was working actually on behalf of the petitioner and in the recriminatory petition filed by this respondent, this circumstance is mentioned. It is further urged that if at all Parameswarappa had leanings towards any political party, his leanings were more towards the Congress party though within the Congress party there might have been some divisions, each of which might have been headed by separate leaders. The fact that Parameswarappa is a patel is spoken to by the P.Ws. referred to above and further even in the recriminatory petition filed by this respondent this Parameswarappa has been described as patel and the first respondent has treated him as a Government servant. In the circumstances, there cannot be any doubt as to the status of Parameswarappa being patel of a village. But, it has to be seen how far the evidence adduced on the side of the petitioner clearly establishes that patel Parameswarappa did really work for and on behalf of the first respondent.

16. First, adverting to the evidence of P.W. 84, Sri H. M. Channabasappa, the President of Mysore District Board, on whose testimony petitioner's counsel placed much reliance, it has to be seen how far his evidence establishes that patel Parameswarappa was the supporter of K.M.P. party on which ticket the first respondent had stood during the last elections. P.W. 84 in his examination in chief has stated as follows: "Then those persons consented to put in writing the charges against the Congress. Then they sent to me some questions in writing to be answered. The said Parameswarappa also questioned me individually on several points and I answered all of them. Some of the significant questions were these: You being the President of the Village Officers' Association, how is it you have been a party to a decision which has curtailed the rights and privileges of the patels and shanbhogues? As you had moved a no-confidence motion against the Government, why have you come to argue out and call upon the people to vote for the Congress party which was running the Government and which has squandered 20 crores of rupees? I answered all these questions. Parameswarappa also asked me as to why, after having moved the no-confidence motion against the Government, I should not make room for the K.M.P. party." In his cross-examination he states as follows: "It did not appear to me very strange that such questions were put to me at a political meeting. I did not welcome the questions. Since the questions were put to me I had to answer them. The companions of Parameswarappa gave the questions in writing but Parameswarappa put oral questions to me. As a question of fact, I

had something to do with the no-confidence motion against the leader of the Congress party. Sri K. C. Reddy was the leader of the Congress party. I did not think that the questioners were the sympathisers of Sri K. C. Reddy's party. It is not correct to say that those persons who put those questions were sympathisers of Sri. K. C. Reddy. I know that there is a Parliamentary Congress Party in regard to election work. I did not report about the questions to the Congress Parliamentary Party. (The witness adds that it was not necessary to make such a report). As I did not find it necessary to make a report, I did not report to anybody that patel Parameswarappa put those questions to me. I did not make a report because I did not know that the said Parameswarappa who questioned me was a patel. I did not verify to know whether he was a patel or not." From the evidence of this witness it may be that patel Parameswarappa had taken some active part in putting questions to this witness. It is further stated by this witness in his examination-in-chief that he asked Parameswarappa whether he was a member of the K.M.P. party and he admitted that he and other persons who were questioning him belonged to the K.M.P. party. In this connection, it is contended by the learned counsel for the first respondent that if really patel Parameswarappa was a member of the K.M.P. party and if P.W.84 knew that Parameswarappa was really a patel, it is quite likely that P.W. 84 would have reported about the activities of Parameswarappa to some of the Government authorities inasmuch as patels and shanbhogues being Government servants within the meaning of clause 8 of section 123 of the Act should not work for any candidate. Apparently, in the light of the evidence of P.W. 84, there were some divisions even in the Congress ranks inasmuch as this witness admits that he had something to do with the no-confidence motion sponsored against the then, leader of the Congress party, Sri K. C. Reddy. If Parameswarappa had leanings towards any political party it would have been quite easy for this witness to report the activities of Parameswarappa either to the Amildar or other Revenue authorities for taking suitable action against him and that course does not seem to have been taken by him. Further, this witness himself admits that it did not appear to him very strange that such questions were put to him at a political meeting. All that could be gathered from the evidence of this witness is that patel Parameswarappa was quite vociferous and that he put a series of questions and it has to be seen whether such a conduct by itself would be sufficient to come within the purview of clause 8 of section 123 of the Act. The corrupt practice as stated in clause 8 of section 123 of the Act is as follows: " Obtaining or procuring or abetting or attempt to obtain or procure by a candidate or his agent or, by any other person with the connivance of a candidate or his agent, in assisting for the furtherance of the prospect of the candidate's election from any person serving under the Government of India or the Government of any

State other than the giving of vote by such person". It is only when a particular candidate or his agent secured any assistance for the furtherance of the prospect of the candidate's election from a Government servant, that would come within the purview of the above clause. Even an adult Government servant is entitled to vote and adult members of his family also will be entitled to vote. Apparently the candidates or agents can approach a Government servant and request him to give his vote. In the circumstances, even a Government servant who is entitled to vote might ask the reasons as to why a particular candidate or a particular organisation should seek his vote and it is nowhere laid down that the Government servant is prohibited from doing even this; otherwise his right to exercise his vote will be practically nullified. In this connection, it may be even said that the majority of the Government servants are a sufficiently educated people and they can intelligently exercise their franchise. There are not materials in the evidence to show whether patel Parameswarappa has any educational qualifications. Even assuming that Parameswappa put several questions referred to by P.W. 84, that circumstance by itself will not show that he had any leanings for any particular political party, especially when P.W. 84 does not appear to have been personally aware whether the said Parameswarappa belonged to K.M.P. party. And further there are not clear and sufficient materials in the evidence of other P.Ws. also that patel Parameswarappa was a member of the K.M.P. party. Again R.W. 1 Sri L. Siddappa, who is one of the leaders of the K.M.P. party has not been questioned whether the said Parameswarappa belonged to K.M.P. party or not. In the circumstances, from the evidance of P.W. 84 only it cannot be gathered that patel Parameswarappa had leanings towards any particular political party. On the other hand, it is contended by the counsel for the first respondent that the leanings of patel Parameswarappa were more towards the Congress party which was led by Sri K. C. Reddy and seeing the nature of questions alleged to have been put by patel Parameswarappa to P.W. 84, this contention is not altogether without any significance particularly as no report whatsoever has been made to the concerned revenue authorities about the activities of patel Parameswarappa.

17. Next, adverting to the testimony of P.W. 87, according to him Parameswarappa had come to his village Baggavalli for canvassing on behalf of the first respondent about 2 or 3 times. In his cross-examination this witness states that he knew that patel of a village should not do any election canvassing work and still he did not object to patel Parameswarappa doing canvassing work and further on he states as follows: "I did not tell either the petitioner or anyone else that he was doing canvassing work. It is the first time that I am telling that patel Parameswarappa was doing canvass work". At the very outset it is contended by the learned counsel for the first respondent that inasmuch as the list of witnesses had not been filed by the learned counsel for the petitioner and as even

the names of witnesses whom he proposed to examine were not given on the previous evening either he was very much handicapped in the cross-examination of P.Ws. Further as already stated, even the petitioner has not been examined in the case and this witness admits that he did not tell either the petitioner or anyone else about the canvassing work done by patel Parameswarappa and it is for the first time in court that he was said to be speaking about this matter. In the circumstances, if the petitioner had been examined, some light would have been thrown as to how and under what circumstances he came to know about this witness knowing about the canvassing work done by Parameswarappa. In view of these circumstances, much weight cannot be attached to the tastimony of this witness P.W. 88 also deposes that patel Parameswarappa had come to his village Kallasettihalli when he asked him to vote for the candidate of the K.M.P. party and he told him that as his name had not been included in the electoral roll, he would not exercise that franchise. There has been practically no cross-examination of this witness. But, it is contended by the counsel for the first respondent that if in fact patel Parameswarappa was actively working for the first respondent as alleged by the petitioner, he would have known about the names of the several voters of the particular village in which he might have worked. It was least likely that Parameswarappa who is represented to be such an active worker would have approached a person of the type of P.W. 88 who was not even a voter and seeing the circumstances of the case as a whole, this contention is not without any force and further, the same observations made in the case of P.W. 87 would apply to this witness as well. In the circumstances, little or no weight can be attached to the testimony of this witness either.

18. Next adverting to the evidence of P.W. 89, Nagappa of Baggavalli village, he also has spoken about Parameswarappa coming to his village twice for the purpose of asking votes for the first respondent. And he further states that Parameswarappa was standing near the polling booth at the Panchayet Hall and was asking the people to vote for the first respondent. In his cross-examination this witness states as follows: " While asking us to vote on those occasions he did not refer to any symbol as belonging to the first respondent; he simply asked us to vote for Nagappa. I did not consent on all those occasions to vote for the first respondent. I had not made up my mind to vote for any particular candidate..... On the election day the said Channapura Parameswarappa asked me near the polling booth to give my vote to the K.M.P. candidate and I consented. There was no one else present when this conversation took place. I have not told anyone up till now about that conversation. I know the petitioner. Up till now I have not at all spoken to him. I know that he belongs to Tarikere. The petitioner had come to the village once. I had

no talk with him then". According to this, witness patel Parameswarappa was said to be asking the persons near the polling booth to vote for the first respondent. Apparently, he knew that Parameswarappa was the patel of a village and if in fact Parameswarappa was actually canvassing for the first respondent near the polling booth for and on behalf of the first respondent, it is likely that some members of the Congress party who might have been present in that booth on behalf of the petitioner might have brought to the notice of the polling authorities about the conduct of patel Parameswarappa. Again this witness admits that he has not even so far talked to the petitioner and if the petitioner had been examined, some material would have been thrown as to how he came to know this witness. On the whole, the version of this witness is bristled with intrinsic improbabilities and little or no weight can be attached to his version.

19. Next, adverting to the evidence of P.W. 18, Hanumanthappa according to whom the first respondent was hiring bicycles for the purpose of the election as per Ex. FFF1, it is stated by this witness that C. Parameswarappa, Devendrappa and one Rajasekharappa have signed Ex. FFF1, on behalf of the first respondent and that he has written the entry showing the payment of Rs. 75 and Ex. FFF2 is that entry and Govindappa, brother of the 1st respondent has paid that sum. In his cross-examination he states as follows: "Parameswarappa and Devendrappa mentioned above took the cycles hird by me. .....They used to take cycles in the morning and return them on the evening. I have informed the petitioner that the first respondent was taking the cycles from me for hire in the manner stated above. About 1½ months ago the petitioner came and asked me if the first respondent had taken the cycles from me. Then I showed Ex. FFF and the entry Ex. FFF1. He asked me to preserve Ex. FFF carefully as it had to be produced before the Tribunal. He did not tell me anything about his having filed the election petition. He did not tell me that he was going to file any election petition. .....I owed Rs. 149 and odd to Govindappa, the brother of the first respondent. He issued a notice to me demanding the amount. That notice was given to me about 2 months ago. Thereafter, I paid the amount due to him and discharged the debt. There was no panchayeti in that connection". It is contended by the counsel for the first respondent that this witness is in no way disinterested inasmuch as he owed money to the brother of the first respondent and in that connection there was some ill feeling. It is admitted by this witness also that he owed Rs. 149 and odd to the brother of the first respondent and that he paid the same after notice was issued to him. In the circumstances, the contention of the first respondent that the feelings between him and this witness are somewhat strained is not without any force. Further, Ex. FFF is an ordinary book and Ex. FFF1 is written at

page 236 and pages 59 to 202 are left blank. Again Ex. FFF1 is as follows :—

9th December 1951 ರಲ್ಲಿ 4. ಸೈಕಲ್ಲು. C. Parameswarappa" and below that entry there are some entries in ink and some entries are in pencil. Parameswarappa purports to have signed in Ex. FFF1 in English. There is nothing to show in Ex. FFF1 that the first respondent or his brother had authorised P.W.18 to lend any cycles to Parameswarappa or any other persons on his behalf. Again, no writing which is admittedly in the handwriting of Parameswarappa or which is proved to have been in the handwriting of Parameswarappa has been produced in the case to show that the signature contained in Ex. FFF1 is that of very Parameswarappa. Further, there are no clear materials in the evidence of P.W. 18 to show that he is acquainted with the handwriting or signature of the said Parameswarappa. Again, the petitioner is said to have approached this witness and asked him to preserve Ex. FFF and, if the petitioner had been examined in the case, some light would have been thrown as to how far the evidence of this witness is true. Viewed in any manner, no weight whatsoever can be attached to the testimony of this witness or to Ex. FFF1.

20. Next, adverting to the evidence of P.W. 29, Yelloji Rao, it is stated by this witness that after the first respondent was declared elected, there was a procession at Ajjampur and that procession was headed by Devendrappa and Parameswarppa who were wearing garlands and about 500 or 600 people were in the procession which was moving at about 4-30 P.M., and this witness does not speak anything about the canvassing alleged to have been made by Parameswarappa prior to the election. P.W.63 Puttarudraiah states that after the first respondent was declared elected, the first respondent was taken in procession in car at Tarikere and the first respondent was standing in the car while Sabjusab and Patel of Channapura were seated. He next states that at the time of procession at Ajjampur, Parameswarappa and Devendrappa were heading the procession by walking. This witness has spoken to several other matters and his evidence will be adverted at some length in connection with those matters. Even assuming that Parameswarappa did take same active part during the procession of the first respondent either at Tarikere or at Ajjampur, that has apparently happened subsequent to the election and until and unless it is clearly established that Parameswarappa had taken part in supporting the candidature of the first respondent during the course of election presence of Parameswarappa at the time of processions would not by itself be quite material.

21. It is next stated that after the first respondent was declared elected, about 60 to 70 persons who had worked for the first respondent had circulated a manifesto among the workers and that Parameswarappa's name was also found in that manifesto and

Ex. BBBB is that manifesto and Parameswarappa is said to have signed Ex. BBBB. P.W.63 Puttarudraiah also speaks about Ex. BBBB. At the same time it is seen from the evidence of P.W.63 that no entertainment was given to the first respondent in pursuance of Ex. BBBB. P.W. 63 is said to have worked for the first respondent during the course of the election. In his cross-examination he states as follows: "No ill-will arose between me and the petitioner because I was carrying on propaganda against him nor did we meet each other. I have come as a witness to-day onbehalf of the first respondent. The petitioner has cited me as a witness to depose in favour of the first respondent. Some days after the counting of votes, the petitioner, when he met me, said to me that he would file the election petition and that I should speak to the facts known to me. He did not ask me to depose to the facts which I am now deposing. Nor did I tell him that I would depose to these facts. Until I stood in the witness box I did not know in respect of which fact I would be examined". It is not clear from the evidence of this witness under what circumstances Ex. BBBB came into existence. No document which is admittedly in the handwriting of Parameswarappa has been produced in the case to show that the signature purporting to be that of Parameswarappa in Ex. BBBB is the very signature of Parameswarappa. Further as many as 60 or 70 names are mentioned in that list and there are not sufficient materials to show who all those 60 or 70 persons are. Again, as borne out from the cross-examination of this witness, the petitioner is said to have approached him and asked him to depose to the facts which he has deposed now and if the petitioner had been examined, there would have been some material to show the *bona fides* of the version of this witness. On the whole, much weight cannot be attached to the testimony of this witness or to Ex. BBBB.

22. Apart from this, there is one other significant circumstance and that is Parameswarappa who is said to have taken a prominent part in supporting the candidature of the first respondent during the course of the election has not been examined on either side. It is stated by the petitioner that patel Parameswarappa was working on behalf of the first respondent and, therefore, he could not examine him as his witness while it is contended by the first respondent that patel Parameswarappa was supporting the petitioner as stated in the recriminatory petition and that he did not therefore choose to examine him. Whatever may be the reason for the non-examination of Parameswarappa, if in fact either side had chosen to examine the said Parameswarappa, much light would have been thrown on the veracity of the several P.Ws. referred to above. As already stated, the issues relating to the corrupt practice are criminal in nature and it is the petitioner who has put forward the several corrupt practices on the part of the first respondent and it is for him to conclusively prove that Parameswarappa did in fact work for the first respondent and the burden on this matter is on

the petitioner and, if the petitioner had attempted to examine the said Parameswarappa and if in fact he was hostile, the petitioner could have asked the permission of the Tribunal to cross-examine the witness and if he had really been cross-examined, some light would have been thrown about the *bona fides* of his version. Again, according to sub-clause (ii) (a) of (A) of section 99 of the Act, is as follows : " At the time of the passing of the orders, there should be a record regarding the names of all the persons who have been proved at the trial to have been guilty of any corrupt or illegal practice and the nature of that practice together with any such recommendation as the Tribunal may have proper to make for the exemption of any persons for the disqualifications ". According to the petitioner, the first respondent is alleged to have utilised the services of patel Parameswarappa, which amounts to a corrupt practice within the meaning of clause 8 of Section 123 of the said Act and according to Section 99 referred to above, there should be a finding that Parameswarappa is one of the persons who is responsible for the corrupt practice and to arrive at such a finding the examination of Parameswarappa was absolutely necessary and inasmuch as neither side has chosen to examine the said Parameswarappa, that is a material defect affecting the case. And, as already stated, inasmuch as the standard of proof required in a case relating to corrupt practice is the one that is required in a criminal case, benefit of doubts and defects, if any, should be given to the first respondent who is in the analogous position of an accused. Practically the same observations have been made in connection with Ahmed Jan, the owner of H.I.M. bus when dealing with the alleged corrupt practice relating to the conveyance of voters by the bus. On the whole, the evidence adduced by the petitioner regarding the alleged activities of Parameswarappa cannot be given any weight and there are not clear materials whatsoever to show that Parameswarappa did really work for the first respondent.

23. The next corrupt practice alleged to have been committed by the first respondent is that he was responsible for the circulation of handbills similar to Ex. KKK according to which Manjaiah Heggade of Dharmasthala is said to have made an appeal to the public, particularly to the Hindu devotees to vote for non-Congress parties inasmuch as the Congress Party was practically acting against the tenets of Hindu Religion and some P.Ws. have been examined by the petitioner with reference to this matter. P.W. 42 who was the Deputy Speaker of the last Legislative Assembly deposes that about 2 or 3 days prior to the election, one Siddappa of Ajjampur came in a van to his place, Lakkavalli and he read some leaflets while sitting in the van and that leaflet was similar to Ex. KKK and there was a reference to Manjaiah Heggade of Dharmasthala in it. P.W. 43 states that people of the K.M.P. party came to do propaganda work in vans and they were asking people to vote for the K.M.P. party to the Assembly and some "ಪಚಾರ" had been received in that connection

and so saying they distributed the leaflets and Ex. KKK is one of the leaflets so distributed. He further avers that people have respect for Manjanathadevaru and they live in fear and veneration for God. P.W. 45 states that about 3 or 4 days prior to the election day, on a certain evening, one Siddappasetty came in a van fitted with a loudspeaker and he had with him a number of handbills and he read the contents of the handbills and distributed them and these handbills were similar to Ex. KKK. The said Siddappasetty was carrying on the said propaganda on behalf of the K.M.P. party and it was set out in the handbills that the Congress was acting against the Hindu Dharma and Mutts and that people should not give votes for the Congress party candidates and that they should give their votes to candidates of any other party. P.W. 103 states that he got one handbill similar to Ex. KKK at Lakkavalli and he had kept it in the file of papers and after the election was over he handed the same to the petitioner. He was said to be the canvassing agent for the petitioner at Lingadahalli. Practically, according to these P.Ws. some handbills similar to Ex. KKK were being distributed by some people of the K.M.P. party and one Siddappasetty is said to have distributed some of these handbills. R.W.1., Sri L. Siddappa who is a leading member of the K.M.P. party states that his party does not subscribe to the views expressed in Ex. KKK and to his knowledge no member of the K.M.P party used the leaflets like Ex. KKK for propaganda work and he had no occasion to look into the leaflets like Ex. KKK. According to the evidence of the P.Ws. referred to above, the utmost that can be gathered is that one Siddappasetty circulated the handbills similar to Ex. KKK. But, R.W.1. who is a responsible member of the K.M.P. party has definitely stated that his party does not subscribe to the views expressed in Ex. KKK. and there are absolutely no materials to discredit the testimony of this witness. Again, there are absolutely no materials to show that the first respondent was in any way responsible for the circulation of the handbills similar to Ex. KKK. Viewed in any manner, it cannot be said that the first respondent is in any way responsible for the said circulation of the handbills like Ex. KKK. This matter relates to the 7th issue and in the result I hold the 7th issue against the petitioner.

24. The next corrupt practice is about the alleged personation in respect of some of the voters and this is a subject matter of the 4th issue. In the first place, the essential details which are necessary for the charge in respect of the false personation are not clearly set out. In the list of particulars no details of the alleged personation are mentioned. In para 7 of the main petition, it is stated as follows :— " The petitioner also charges that several votes had been counted as valid in favour of the respondent which really ought not to have been so counted as either some of them were imporsonated votes or votes not of those of the voters found in the list, either in some cases the voters in the list were dead and in some

other cases the real voters did not turn up. The petitioner having not got copies of the voters list is handicapped in furnishing details at this stage. (He further submits that on re-count this submission made for the petitioner will find support)". Even before the evidence was commenced and even subsequently the necessary particulars have not been furnished by the petitioner. In this connection it is contended by the learned counsel for the 1st respondent that unless and until the full particulars relating to the charges are furnished the alleged charge of impersonation is not at all sustainable in law. At page 191 of the Law of Elections by H.S. Doabia, 2nd Edition, it is observed as follows: "It is essential that in the case of an allegation of personation, the particulars of each instance should be given in the list of particulars. Thus the name of the voter personated or his number in the roll, the polling station to which the voter belongs, the date on and the polling station at which the corrupt practice committed should be given." It is further observed in this volume that a personator is an accomplice and it is essential that his statement should be corroborated in material particulars. In the present case the essential particulars referred to above have not been set out by the petitioner at all. In the circumstances this charge of personation is not *prima facie* sustainable. Even assuming that the charge is maintainable, it has to be seen how far the evidence adduced is clear and cogent. The evidence of P.Ws. 55, 103 and 105 may be referred to in this connection. P.W. 55 simply states that he and his wife are only two voters in his house and his brother-in-law Somladurgi lives next door to him and he had not been married by the time the election took place and he had another younger brother Somla Naik who died 2 or 3 years ago and he had married one Sakri who left her husband's house about 15 days after his death and went to reside in a village 25 miles away. This witness practically does not speak anything definite about the alleged personation. P.W. 93 Lakshman deposes that his mother died about 6 months prior to the last election and Ext. TT relates to Booth No. 67 1 of Tarikere and Serial No. 272 in Ext. TT relates to him and Sl. No. 273 relates to his brother Thimmanna and Sl. No. 274 relates to his grandmother and Sl. No. 275 relates to his mother. Even from the evidence of this witness there are no materials whatsoever to show that anybody personated his deceased mother or any other voters of his family. P.W. 103 was said to be the Secretary of the Tarikere Taluk Congress Election Committee and as Secretary he had kept with him the list of voters that had to exercise franchise in the booth at Lingadahalli, and Ext. MMMM is the list which he has produced and he further states that he has noted in the list against the persons who were not available the word "Absent" in English, and he has put the "cross marks" against the names of persons found in this list who were dead, and these marks are based on the information he gathered. There is no material in the evidence of this witness on what basis he prepared

that list and how for the information collected by him is correct and reliable and in the absence of these circumstances no weight whatsoever can be attached to the testimony of this witness or Ext. MMMM. Next adverting to the testimony of P.W. 105 who was also said to be a canvassing agent for the petitioner at the time of the last election states that he prepared a list of dead persons on enquiry and Ext. PPPP is that list and practically the same observations that were made in respect of the previous witness are applicable to this witness, and in the circumstances no weight can be attached to the testimony of this witness either. On the whole, there is absolutely no evidence to show that any particular person personated any living voter or any other dead person whose name was found on the voters' list. In the circumstances, it has to be said that the alleged charge of personation has not been proved and I therefore hold the 4th issue against the petitioner.

25. It is further stated by the petitioner that on 28th January the respondent arranged for a grand tea party in his friend's house at Abbinaholalu and promises were taken from several voters who were fed on that day and this is the subject matter of the 8th issue. It is further alleged that on 2nd January 1952 in Menasinakai Hosahalli in his freind's house the 1st respondent gave another dinner where similar promises were taken. It is for the petitioner to substantiate these charges, and no evidence whatsoever has been adduced to prove the alleged entertainment at Menasinakai Hosalli on 2nd January 1952. As regards the entertainment which is said to have taken place at Abbinaholalu on 28th January 1951 the only evidence is that of P. 101 and this witness deposes that about 15 days prior to the election there was election propaganda in Katiganere village on behalf of the K.M.P. Party at which Sri. L. Siddappa, Sri Mohamed Imam and 1st respondent and Sabju Sab addressed the people and after the meeting was over, Deveerappa took him and others to Abbinaholalu where there was a sumptuous dinner arranged for these 40 to 50 persons and he also partook of the dinner that was served there and afterwards they all went to Panchayathi Hall when Messrs. L. Siddappa, J. Md. Imam and others asked them to vote for the K.M.P. Party. This witness in cross-examination states that Sri. L Siddappa and others explained to them the ideals of the K.M.P. Party and asked them to vote if they were satisfied with their ideals. Sri. L. Siddappa is examined as R.W. 1 and he deposes that he addressed the several meetings of this Constituency and also elsewhere in connection with the K.M.P. party and Deveerappa who is his relation invited him for dinner in his house at Abbinaholalu and he and his companions took food in Deveerappa's house on that day, and he further avers that before he took dinner he had completed the propaganda work in Katiganere. He has been cross-examined at considerable length and he states in cross-examination as follows : " Deveerappa did not tell me when he met me that he had arranged for a dinner in his house. He said that I was coming very rarely to

those parts and that he would take advantage of my presence there to invite me for dinner in his house. 4 or 5 persons of our party and another 4 or 5 persons, in all about ten persons were in the room in which we took food." According to this witness, only ten persons are said to have taken food and there si absolutely no material whatsoever to discredit his testimony. Furthar even P.W. 103 does not state that any premises from voters were taken by the .K.M.P. Party or any others and apart from the testimony of R.W.I and even from the evidence of P.W. 103, it cannot at all be said that this charge has been substantiated. In the result, I hold the 8th issue against the petitioner.

Election Expenses.

26. One of the contentions of the petitioner is that the list of election expenses furnished by the 1st respondent is false in material particulars and that he has thereby committed a minor offence within the meaning of Section 124 of the representation of Peoples Act. The list of particulars regarding this matter annexed to the main petition is as follows: "The 1st respondent commenced the canvassing from 1st November 1951 by touring in the Constituency village after village. He has not shown the petrol expenses for this convassing tour. The petrol expenses and the car expenses etc., would easily swell to considerable figure. The 1st respondent used his friend's Sri. K V. Sathyanarayana Setty's car and not only was he using his car but also drawing petrol in his name. The petrol bill which appears in the name of Sri. K. V Sathyanarayana Setty is about Rs. 636 in the petrol bunk of Sri. K. Venkataswamy. Similarly he has drawn petrol in other's name *i.e.*. entered in the name of Sri. Parameswarappa at Birur. These expenses also are not shown in the return of expenses. The 1st respondent had at least 7 vans working for him apart from his tour vans bearing No. 587 and 3,820 belonging to him. He has not shown the hiring charges in respect of these vans. These vans bearing Nos. MY 8894 Z, MY 9692 Z, MY 8963 Z, MY 9073 E, MY 6526 Z, MY 6527 Z and MY 3537 Z. The 1st respondent has also not shown the dinner expenses and the expenses incurred in the hotel. All these expenses he has omitted would easily exceed the sanctioned limit of Rs. 5,000." From the particulars mentioned above the 1st respondent is said to have failed to include the expenses in respect of 3 items, *viz.*, (1) the charges of petrol incurred in his name as also in the names of his friends, (2) the use of the cars and vans and the expenditure incurred in that connection, and (3) the expenses incurred by the respondent towards the hotel and dinner charges In this connection, the petitioner has examined several witnesses to show at or about the time of the election that the 1st respondent has drawn large sums of money from the banks as well as from other persons to show that all these amounts have been utilised towards the election propaganda, but in the particulars annexed to the petition and referred to above, there is no mention of the alleged drawal of the amounts from the banks or from other

persons. In this connection, it is contended by the learned counsel for the 1st respondent that the petitioner has snmmoned various persons and banks and what he has done is practically a Roving enquiry and such a method is not at all contemplated under the law. It is also further contended that even in this matter the onus is on the petitioner to show that the list of election expenses is false in material particulars. At page 123 of "Law of Elections" by H. S Doabia 2nd Edition 1952 it is observed as follows: "It is for the petitioner to prove during the trial of an election petition that the return of expenses filed by the respondent is false in material particulars but the plea regarding the non-inclusion of certain items in the return must be taken in the petition, otherwise it must be disallowed." Further on at page 124 in the same volume it is observed as follows: "The petitioner must prove that expenses were omitted deliberately. These omissions of expenses due to oversight or misapprehension of legal position would constitute a mere irregularity not affecting the result of election . . . . . Similary expenses incurred and included in the account but accidentally omitted from the return of expenses will not constitute material omission." In the light of the above principles it has to be seen how far the evidence adduced in the case clearly goes to show that the list of expenses furnished by the 1st respondent is false in material particulars. Some evidence has been adduced to show that about the period of the election the 1st respondent has drawn lot of petrol from the various bunks. The 1st respondent who is examined as R. W. 19 deposes that he has submitted his return of expenses Ext. AAA showing the expenses incurred by him in connection with the election, and that he has entered all the expenses incurred by him and that he has also attached to the return all the vouchers relating to the expenses incurred by him, and that he has also produced day book showing the expenses incurred by him and Ext.XXIV is the day book. The 1st respondent is said to be dealing in timber and areca business, and he further states that in the months of November, December and January he usually gets large amounts as it is the season for his business and the money spent out of this business is shown in the return and other amounts were appropriated by him to other business and they are shown in his accounts and that he has also produced treasury bills showing remittance of money into the treasury in respect of his business in timber, and that he has also produced accounts of the previous years to show that during those periods he has obtained to his hands larger amounts. He further avers that he has also got constructed 5 buildings at Tarikere. P.W 32, the Manager of Malnad Commercial Bank, has brought the extract of the transaction of M. Thimmiah & Sons and the 1st respondent and his brother Govindappa are the partners of that firm Thimmaiah Sons, and he further avers that said Thimmiah Sons has transactions with the bank for the last 22 years. P.W.53 who is an arecanut merchant at Shimoga deposes

that the firm of Thimmiah Sons of which the 1st respondent and his brother are members had transactions with his shop, and he further states that said Thimmiah Sons had transactions with him from 1st November 1951 to end of March 1952 as per Ext.NNN1 in Ext.NNN. He further states in his cross-examination that the said Thimmiah Sons have transactions with him for the last 25 years in areca and their transactions with him extend to about Rs. 50,000 per year on an average. Again it is also alleged by the petitioner that the 1st respondent on or about the time of the election has drawn several amounts from several banks by means of self-cheques on the banks. The contention of the 1st respondent is that he is doing arecanut and timber business and that he has also built about some houses about that period and that he was utilising all the amounts for these purposes and that he has not spent anything more than what is mentioned in the election expenses and amounts drawn by him have been utilised for other purposes. The onus is on the petitioner to show that the return of election expenses filed by the 1st respondent is false in material particulars. No doubt it may be difficult for the petitioner to adduce clear and convincing evidence regarding this matter inasmuch as the 1st respondent only will have the special knowledge of all the items of expenditure, but inasmuch as this issue is also in the nature of a criminal charge the standard of proof is the one that is required in the criminal case, and in view of this it is for the petitioner to clearly establish this charge beyond any reasonable doubt. From the mere circumstance that the 1st respondent had drawn large amounts at or about the time of election it cannot at all be presumed that all those amounts were utilised towards the election propaganda. In this case the petitioner is said to be an arecanut and timber merchant and he is also alleged to have constructed some houses about that period and there are absolutely no materials to discredit the testimony of P.Ws 32 and 53. Further both the petitioner and the 1st respondent are said to be partners in the Talkie Business at Tarikere and each of them is said to have invested fifty thousand rupees. In view of the intimate relationship that was subsisting between the petitioner and the 1st respondent even the petitioner would have some knowledge of the dealings of the 1st respondent. On the whole from the mere circumstance that the petitioner had drawn large amounts of money from about October 1951 to January 1952 it cannot at all be said that those amounts were utilised towards the election work.

27. As already stated, the only items of expenditure omitted by the 1st respondent are said to be the petrol charges, the amounts incurred by the 1st respondent in connection with the vans and cars that were alleged to have been utilised by him for the election propaganda work and also the dinner and hotel charges. In this connection, it is contended by the learned counsel for the 1st respondent that this is not a case of accounts where at times the onus may be on both the parties, and inasmuch as this is in the nature of

a criminal charge it is for the petitioner to clearly establish the specific amount omitted by the 1st respondent and also the corrupt motives on the part of the 1st respondent. P.W. 12 who is in charge of the petrol bunk of K. Venkataswamy & Co., Tarikere, has produced the counterfoils relating to the issue of petrol from the period 27th October 1951 to 11th November 1951, and he has further produced the statements Exts. Q to Q-14 showing the petrol issued to 1st respondent and others. He also states that the 1st respondent has drawn cheques for large amounts ranging in all from Rs. 300 to Rs. 600, and he further states that during the election time in the absence of the 1st respondent, his driver used to make cash payments for the petrol purchased from them, and one K. V. Sathyanarayana Setty had also cash transactions in the matter of purchasing petrol, and in the counterfoils produced that there were certain counterfoils relating to his transactions and the said Sathyanarayana Setty used to make payments only in cash. In cross-examination he states that persons doing timber business do large volume of business in the months of October, November, December and January and during that period the timber merchants draw large quantities of petrol for conveying timber in lorries, and he is not in a position to state how much quantity of petrol the 1st respondent has drawn for his timber business and how much for election propaganda work. Further on in his cross-examination he states that there was a litigation of his to the value of Rs. 3,000 or Rs. 4,000 pending in the Court at Ranebennur and in that connection he had contracted debts from the 1st respondent and he has discharged all the debts. P.W. 51 who is a clerk working in the bunk at Tarikere during December 1951 deposes that the 1st respondent used to take petrol from him for the use of the cars used by him for election propaganda, and he did not take any petrol from that bunk for the use of any lorry of his and the 1st respondent was not purchasing petrol from the said bunk for the use of others in his name. He further avers that the 1st respondent had given standing instructions that whenever petrol was taken from that bunk the clerk in charge of the bunk should sign in one book against the entry showing the purchase of petrol in the book maintained by the driver and the driver should affix his signature against the corresponding entry in the book maintained by the clerk, and Ext. MMM is one of the books referred to above which was with the driver and he has affixed his signatures Exts. MMM 1 and MMM 2. He further avers the 1st respondent used to pay for the petrol taken from the bunk by issuing cheques. From the evidence of the above P.Ws. it may be said that the 1st respondent was drawing fairly large quantities of petrol and it is seen from the evidence of P.W. 12 that from the month of October to January the timber merchants used to draw large petrol on account of their heavy business. The fact that the 1st respondent is doing timber business is not denied, and from the more circumstance that the 1st respondent has drawn considerable

quantities of petrol during that period it cannot at all be said that the entire petrol drawn by him during that period was utilised for the election propaganda work. It is for the petitioner to clearly show that all the petrol drawn by the 1st respondent during that period was utilised for the election work and no clear evidence whatsoever has been adduced by the petitioner in that connection. In the circumstances the non-mention of the entire petrol drawn by the 1st respondent in the return of expenses, it cannot at all be said that it is a material irregularity.

28. Next adverting to the question of the vans and cars alleged to have been used by the first respondent during the course of his election propaganda as set out in para 7 of the particulars annexed to the application the first respondent is said to have at least used 7 vans besides the car of his friend K. V. Satyanarayana Setty. And it is further averred that the first respondent has failed to mention these particulars in the list of expenses furnished by him. And it has to be seen how far this contention has any force. In this connection the evidence of P.Ws. 14, 36, 37, 50 ,54, 62 and 63 may be referred to. P.W. 14 Seetaramaiah who is a clerk in the Auto-Engineering Works at Shimoga speaks about bill book Ex. W. which relates to a Morris car and states that the first respondent asked them to repair the car and that he undertook to pay the charges himself. And the first respondent has affixed his signature to Ex. W 2 also and about a month thereafter when the first respondent and two others came to make payment the first respondent said that the car did not belong to him and that the car belonged to one Satyanarayana Setty and that the bill could be drawn in his name. And as he had not brought the original in the duplicate Ex. W 2 it was noted that Satyanarayana Setty was the owner of the car. P.W. 54 is Satyanarayana Setty and he states that he offered himself as the polling agent for the first respondent and as it was objected by another candidate he was not accepted by the Returning Officer and he was owning a Morris car and he further avers that Ananda Rao of Automobile Works at Shimoga told him that his driver and the driver of the first respondent had both taken his car and he prepared the bill in the name of the first respondent as his name was not known to him. And he further states that on the recommendation of the first respondent he sent his car to one Ananda Rao's garage for repairs and when he made the payment he told Ananda Rao that the car belonged to him and that a receipt was got issued in his name for him and the first respondent is stated to have owned a Standard Vanguard Car. He also states that there is no account of the first respondent relating to any transactions with him. It is the case of the petitioner that the first respondent has used the car of P.W. 54 for the election purposes and that the first respondent himself has paid the repairing charges of the bill to Ananda Rao's Garage Works and that subsequently as difficulties might arise in connection with the preparation of Return of Election expenses, the first respondent

in collusion with P.W. 54 Satyanarayana Setty has tried to see that the receipt is changed to the name of P.W. 54 Satyanarayana Setty, and the failure to mention in the list of expenses of this car is a very material one. And it has to be seen how far this contention has any force. It is also contended that P.W. 54 is quite interested inasmuch as he even offered himself to become the polling agent of the first respondent though his nomination was not accepted. It is also stated that on 29th September 1952 P.W. 54 gave an entertainment to Duggappa, the son-in-law of the first respondent on the eve of his departure to England. As already stated, practically this issue is also in the nature of a criminal case and the initial burden is upon the petitioner and it is for the petitioner to clearly establish that the first respondent did really use the car of Satyanarayana Setty for election purposes. If really P.W. 54 was hostile to the petitioner, the petitioner should have convinced the Tribunal and sought permission of the Tribunal for cross-examining this witness and no such course has been adopted by the petitioner's counsel. No doubt, as borne out from the evidence of P.W. 14., the Morris car belonging to P.W. 54 has been repaired in the Auto-Engineering Works, Shimoga and it is further seen from the evidence of P.W. 14 that at first the bill W 2 had been made out in the name of the first respondent and subsequently the name of the first respondent has been struck off and the name of P.W. 54 has been entered. P.W. 14, in his cross-examination states as follows: "I cannot mention the names of the two other persons who had accompanied the first defendant when the first respondent came with Satyanarayana Setty and got the note made in Ex. W 2 that the car belonged to Satyanarayana Setty. It is not stated in Ex. AA that the first respondent asked that the receipt should be prepared in the name of Satynarayana Setty and that he made the payment for him. I have not till now told any one about the transactions relating to entries. . ." It is not the case of the petitioner that the Morris car referred to belonged to the first respondent. And apparently this car belonged to P.W. 54 Satyanarayana Setty. The main question for consideration is whether the first respondent did really make use of this car for election purposes and whether he himself paid the repairing charges towards the car. P.W. 54 in his chief-examination states as follows: "On the recommendation of the first respondent I sent my car to the garage of Ananda Rao for repairs. When I made the payment I told Ananda Rao that the car belonged to me and hence the receipt for payment was got issued in my name by him. The 1st respondent's car is a Standard Vanguard Car." This witness states that he himself paid the repairing charges for his Morris car. Again it is seen from the evidence of P.W. 14 that the 1st respondent has not signed Exs. W 1 and W 2. P.W. 14. states the the first respondent paid money in respect of Ex. W 2 and got a receipt Ex. AAA prepared in the name of Satyanarayana Setty. On the other hand, according to P.W, 54 he himself is said to have paid the repairing charges to

Ananda Rao. P.W. 14. is only a clerk in the Auto Engineering Works of which Ananda Rao is said to be the proprietor. It is contended by the learned counsel for the respondent that the proper person who has to speak about the alleged payments of the repairing charges either by the first respondent or P.W. 54 Satyanarayana Setty is Ananda Rao, particularly when the version of P.Ws. 14 and 54 is conflicting and on account of non-examination of Ananda Rao, no weight whatsoever can be attached to the evidence of P.W. 14. It is stated by P.W. 54 Satyanarayana Setty that he paid the amount to Ananda Rao, the proprietor of the Works. In the circumstances, Ananda Rao becomes a material witness and further Ananda Rao is the proprietor of the Auto Engineering Works under which P.W. 14, is working and, hence, Ananda Rao who apparently is the proprietor of the Works would be a much better person to depose relating to this matter and in the absence of his evidence, much weight cannot be attached to the testimony of P.W. 14. P.W. 62 Ananta Sastry who is a clerk in Trades and Service, Shimoga, states that the car had been brought to Shimoga to Auto Engineering Works for repairs and the said Works asked them to supply some parts for that car saying that bill may be given later on and the people of the Auto Works did not tell them to whom the spare parts were required and they first prepared the bill in the name of T. Nagappa care of Auto Engineering Works and Exs. YYY and YYY 1, are the said two bills and they received money in respect of those bills on 28th April 1952 from Ananda Rao by means of a cheque. And he further states that Ananda Rao told him that the car did not belong to Nagappa and that the cheque had been given by Satyanarayana Setty (P.W. 54) to whom the car belonged and the bill should be changed to his name and hence he passed a receipt in favour of K. V. Satyanarayana Setty as per counterfoil Ex ZZZ. Even according to this witness, it is K. V. Satyanarayana Setty P.W. 54, who has issued the cheque for Rs. 56 and odd and this cheque is said to have been issued apparently on the instructions of Ananda Rao and even from the evidence of this witness, Ananda Rao will be a material witness and inasmuch as the said Ananda Rao has not been examined, it cannot at all be said that the payment has been made by the first respondent. And on the other hand, it is Satyanarayana Rao, P.W. 54, who has issued the cheque according to this witness. Next adverting to the evidence of P.W. 63 Puttarudraiah who is said to be working in the Satyanarayana Mills, deposes that one of the cars belonging to his employer Satyanarayana Setty (P.W. 54) was a Morris car bearing No. MY 6525 Z and he was driving that car and Satyanaraya Setty asked him to drive the car for the first respondent for canvassing work and the said car was left for repairs in Ananda Rao's garage for about 10 or 12 days. He is not able to state as to who paid the repairing charges of this Morris car. But, at the same time he states at the time the Morris car was taken after repairs the bills were drawn up by the said Ananda Rao in the name of the

first respondent and the counterfoils of bills are Exs. W1 and W2 and he gave the bills to the 1st respondent and that he has signed them. As seen from the evidence of this witness, he does not know as to who actually paid the repairing charges for the Morris car. It is the case of the petitioner that the first respondent himself has paid the repairing charges for this car and that he had used this car This witness was an employee under P.W. 54 Satyanarayana Setty and P.W. 54 does not in any way support the petitioner and according to him he himself has paid the repairing charges for the car. As already noticed, the important witness who could have spoken about these matters is Ananda Rao and as he has not been examined, much weight cannot be attached to the evidence of this witness either.

29. P.W. 36 Muniswamy Naidu deposes that he had given his car bearing No. MY 8894 Z to one Ramaiah on behalf of the first respondent as Ramaiah asked him to give the car saying that it was required for election work and he further avers that the car was not in use as tyres were not in good order and Ramappa said that he would purchase tyres for the car and make use of it for the election work and he, therefore, gave the car to him and the car remained with Ramappa for 8 or 10 days and subsquently it was returned to him. He also states that the petrol for the car was purchased by the said Ramappa and when the car was returned to him, the car had one new tyre and two old tyres and the new tyre which Ramappa had purchased for it was of the value of Rs. 210. In para 7 of the list of particulars annexed to the petition, the names of some of the cars and vans have been mentioned. According to P.W. 36, he is said to have lent his Chevrolet car bearing No. MY 8894 Z to Ramappa on behalf of the first respondent and in that list of particulars this vehicle bearing MY 8894 Z is described as a van. According to P.W. 36, this car is said to have remained with Ramappa for about 8 or 10 days. In this cross-examination P.W. 36 states as follows: "There was no one else when the aforesaid talk took place between me and Ramappa except Ramappa, the driver and myself. The said talk between us took place at Chikmagalur at the place where the car was left as not useful. I know the said Ramappa for the past 10 or 15 years. He had not taken my car at any time prior to it. He had never asked me for it. The said Ramappa does not own a car. The talk relating to the car took place on one occasion and he took the car the very day some time later". In his re-examination he states that while he was doing Excise contract work Ramappa was also doing the same work and hence he know him well. Even according to this witness, it is only to Ramappa he is alleged to have lent his car and he does not speak anything about the first respondent. Before any importance could be attached to the testimony of this witness, it has to been seen whether Ramappa was acting for and on behalf of the first respondent in taking the car from this witness. The proper person who could speak about this

matter is Ramappa himself and no attempt seems to have been made to examine the said Ramappa. Further there is no evidence to show what connection Ramappa had with the first respondent and in the absence of this material, it cannot at all be said that the said Ramappa had taken this car for and on behalf of the first respondent. At best, from the evidence of this witness, it may be said that the car in question had been lent by this witness to Ramappa and that by itself will not carry any further. P.W. 37 Ramachar speaks about his lending his car MY 9692 Z to the first respondent and he states that he gave his car about the end of December 1951 and a driver had come on behalf of the first respondent with P.W. 36 Muniswamy Naidu and he took possession of the car and he further avers that he had left his car in the Workshop and they inspected the car and asked him to lend the car for four days and he said that the car had no tyres and if they should get the new tyres to the car they may take it and then they brought two tyres costing Rs. 210 and after fitting them to the car took the car and about four days later the car was returned to him. This vehicle is also described in the list of particulars annexed to the petition as a van. It is contended by the learned counsel for the first respondent that the version of this witness is highly improbable and it is least likely that for the use of this car for six days any person would spend a sum of Rs. 210 towards purchase of new tyres that too for an old car which was in the workshop. This witness in his cross-examination states as follows: "I do not know who fitted the tyres to the car. I gave the tyres to the driver Nagappa and asked him to get them fitted to the car and went away. Those two tyres were the tyres of a Ford car and they had been used for some time. That Ford car belongs to one Ahmedeen. I paid the sum of Rs. 210 later to Ahmedeen. I consented to give the car because Muniswamy Naidu requested me to give it". From the evidence of this witness it cannot be definitely stated that the first respondent had been acquainted with this witness at any time before, particularly as he states that he consented to give the car on account of Muniswamy Naidu. As seen from his cross-examination he is said to have paid Rs. 210 to one Ahmedeen towards the purchase of those tyres and there are no materials to show who that Ahmedeen is and no attempt has been made to examine the said Ahmedeen. In the light of the evidence of this witness Ahmedeen will be a material witness and from the non-examination of Ahmedeen and as also there are no circumstances to show that the 1st respondent had been acquainted with this witness at any time before, much weight cannot be attached to the testimony of this witness either. Next adverting to the evidence of P.W. 50 Mohamed Sheriff, he states that his sowcar Abdul Razack had asked him to take his car MY 7537 Z to the first respondent and accordingly he took the car and produced it before the first respondent at Tarikere. And he further avers that two persons whose names he does not remember had come

from Ajjampur to Chikmagalur to have a talk with his employer for taking the said car and he also states that after coming to Tarikere he used to leave the car near the house of the first respondent and that he was driving the car for the first respondent for about 8 or 9 days thereafter and the first respondent and the members of his party used to move about in the car for carrying on the election propoganda. It is contended by the counsel for the first respondent that this car does not find a place in the list of particulars at all and in the absence of this, much weight cannot be attached to the testimony of this witness, particularly as the onus even on this matter is on the petitioner. It is seen from the list of particulars that the number of this car is not mentioned therein and it is only MY3537Z that is mentioned. Moreover, in the list of particulars, the owners of the said cars and vans and other detailed particulars are not set out. In the circumstances, much weight cannot be attached to the evidence of this witness.

30. The next item of expenditure alleged to have been made by the first respondent is in respect of the dinner expenses and the expenses incurred by the first respondent towards the hotel charges. It is not set out in the list of particulars annexed to the petition about the names of hotels or other details nor is it stated that these expenses have been really incurred by the first respondent for the purpose of feeding the voters or for purpose of feeding the workers. At page 123 of the "Law of Elections" by Doabia 2nd edition (1952), it is observed as follows: "It is for the petitioner to prove during the trial of an election petition that the Return of Expenses filed by the respondent is false in material particulars..... ...But the plea regarding the non-inclusion of certain item is in Return must be taken in the petition; otherwise it will be disallowed.

(*Supra*). In this case it was also held that corrupt motive for making false Return must be shown and that merely giving of an incomplete description of this is not a material irregularity." In the light of these observations, it is for the petitioner to clearly prove that the Return of Expenses filed by the first respondent is false in material particulars. The names of the hotel-keepers or the dinners where the first respondent is alleged to have arranged are not set out in the list of particulars.

31. Next, adverting to the evidence adduced by the petitioner on this matter, practically the only witnesses who have spoken about this circumstance are P.Ws. 19 and 38. P.W. 19 Baburao deposes as follows: "At the time of elections one Haralappa had opened an account in my restaurant. The said Haralappa had asked me to debit to his account the expenses incurred in giving tiffin to the persons to whom he would give chits for taking tiffin in my restaurant; such arrangement was made before the last election about 3 months prior to 4th January 1952 and he used to give tiffin for those who used to bring chits from Haralappa and he used to enter the

accounts in an account book given by the said Haralappa and after making payments he took back the book and the payment made by him in that connection aggregate to Rs. 700. He next avers : "At first Haralappa used to make such payments by cash and later on when he was pressed for balance, Haralappa got a cheque issued from Govindappa, the brother of the first respondent for Rs. 200 and finally settled the amount due to him and that cheque was drawn on the Malnad Commercial Bank, Ltd. Lastly, he states that he cannot say who all took tiffin in his restaurant according to that arrangement. P.W. 38 Marulasiddaiah deposes that Obalappa and Ramaiah had come to him about a month prior to the election and then he asked him to supply tiffin to all the voters at the time of elections and he used to serve tiffin to those persons brought by them and used to meet the bills for the tiffin supply and the total amount of the bill came to Rs. 75. He next avers -that out of this amount Ramaiah paid him Rs. 45 and after the elections were over he pressed Ramaiah for the balance of Rs. 30 and Ramaiah stated that Mallappa of Tavarekere would pay it and he asked Mallappa thereafter to settle the dues and thereafter Ramaiah said that he would come and pay. Ex. JJJ is a post-card written to him by the said Mallappa and subsequently he went to Tarikere and recovered the amount from Ramaiah. P.W. 19 in his cross-examination deposes as follows : "I do not know if the said Haralappa himself had stood as a candidate for the Legislative Assembly from Tarikere and later on withdrew his candidature. I know one Danappa. I had money dealings with him. He owed me money. I was pressing him for discharging the debt. Govindappa, the brother of the first respondent, had not come to the panchayati. (The witness gives this answer after some hesitation). It is not true that the said cheque for Rs. 200 was given by the said Govindappa on behalf of the said Danappa. It was given by him on behalf of Haralappa". The utmost that can be gathered from the evidence of this witness is that he gave some tiffin to some people at the instance of Haralappa. It is not clear from the evidence of this witness whether the said Haralappa was working for the first respondent or that he had anything to do with the first respondent. No doubt, this witness has stated that Govindappa brother of the first respondent has given a cheque for Rs. 200 towards his bill. On the other hand, it is suggested in his cross-examination that this cheque was given by Govindappa on behalf of the said Danappa who owed this witness. From the mere circumstance that this witness has received a cheque for Rs. 200 from the brother of 1st respondent, it cannot be definitely said that this cheque was paid towards the tiffin charges, particularly in the absence of any evidence to show that the first respondent or his brother had engaged the services of this witness. Further as Haralappa at whose instance this witness is said to have supplied the tiffin has not been examined in the case, much value cannot be attached to the testimony of this witness

According to P.W. 38, he is said to have supplied tiffin at the instance of Ramaiah and Obalappa and no attempt has been made to examine the said Obalappa and Ramaiah. Nor are there any other material to show what connection the said Obalappa and Ramaiah have with the first respondent. It is also alleged that one Mallappa had stood as surety for Obalappa and Ramaiah as this witness had not known the latter persons. And even the said Mallappa has not been examined in the case. In the circumstances, no weight can be attached to the evidence of this witness either.

32. It is further contended that as seen from the evidence of the first respondent, he had engaged many workers and also spent considerable amount of money for printing the pamphlets and for distributing the same and these amounts also have not been specifically mentioned in the list of expenses. It is also alleged that Traveller's Bungalow charges alleged to have been paid by the first respondent's brother when Sri L. Siddappa, R.W. 1 and Sri Imam, the prominent members of the K.M.P. Party had come to Tarikere and stayed in the T.B. at Tarikere in connection with the election propaganda of their party is not mentioned in the list of expenses. It is no doubt seen that the first respondent has stood on the K.M.P. Party ticket. It is also seen from the evidence of R.W. 1., Sri L. Siddappa, that he and Sri Imam had gone to several places including Tarikere in connection with the party programme and a sum of Rs. 1-11-0 is said to have been paid by Govindappa, the brother of the first respondent towards T.B. charges, when Sri L. Siddappa, R.W. 1 and Sri Imam had stayed in the T.B. But this amount has not been mentioned in the list of particulars and further even the amounts that might have been spent by the first respondent towards the workers and also the amounts that are alleged to have been spent towards printing of pamphlets and the distribution of the same are also not mentioned in the list of particulars. It is also further contended by the counsel for the first respondent that from the mere fact that Govindappa, the brother of the first respondent, has signed in the T.B. register regarding the payment, it cannot be inferred that the first respondent himself was responsible for that payment inasmuch as on many occasion whenever officers or prominent persons stop in the T.B., motor driver or the clerk would sign the register for the payment of T.B. charges. No doubt, this contention is not without significance. Apart from that inasmuch as the T.B. charges of Rs. 1-11-0 and other expenses mentioned above have not been mentioned in the list of particulars at all, they cannot be taken into consideration. As already stated, it is for the petitioner to prove that the omission of the several material expenses is wilful and that the first respondent has done so with corrupt motive and the evidence adduced by the petitioner does not clearly establish the same.

33. It is next contended by the learned counsel for the petitioner that XXIV which is the list of expenses furnished

by the first respondent is written in an exercise book and that seems to have been practically written on a single day and that has been virtually fabricated subsequently. In this connection, it is contended by the learned counsel for the respondent that the first respondent was doing timber business and areca business, and that he has maintained several account books regarding those transactions and the amounts drawn from the several business are entered in Ex. XXIV find a place in the corresponding account books relating to particular business and it is, therefore, urged that it cannot at all be said that Ex. XXIV is a spurious document. The other account books though apparently seem to have been summoned by the petitioner have not been exhibited in the case. Having regard to all the circumstances, it cannot be said that Ex. XXIV is a fabricated document. No doubt, seeing the entries made in Ex. XXIV, there may be some suspicion. According to Ex. XXIV, the first respondent is alleged to have incurred an expenditure within about Rs. 3,000 and it is contended by the learned counsel for the petitioner that it is highly improbable that the first respondent would have incurred only that much of expenditure in view of the fact that there are as many as 45 to 46 polling booths. It is probable that the first respondent may have incurred expenditure more than what is mentioned in Ex. XXIV. But, the onus is on the petitioner to clearly show that the amount of expenditure incurred by the first respondent exceeds the maximum authorised figure of Rs. 5,000 and so long as this circumstance has not been clearly proved, suspicion however strong cannot take the place of adequate proof. Viewed in any manner, it cannot be said that the first respondent has committed any corrupt practice even in respect of the Return of the Election Expenses.

Non-Examination of the Petitioner.

34. The petitioner has made so many allegations against the 1st respondent and yet he has not chosen to step into the witness box. As many as 105 P.Ws. have been examined on his side, and afterwards the learned counsel for the petitioner stated that the petitioner has not much personal knowledge and that he would examine the petitioner, if necessary, after the 1st respondent adduced his evidence on the recriminatory petition. Subsequently, the learned counsel for the 1st respondent has not pressed the recriminatory petition with the result that no evidence has been adduced by him on that matter, and hence the petitioner has also not been examined in the case. Even on the last date of the argument, I questioned the learned counsel for the petitioner as to why the petitioner was not examined and he stated that it is practically unnecessary. One of the contentions of the petitioner is that the Return of Election Expenses filed by the 1st respondent is false in material particulars and in that connection, the petitioner has tried to adduce evidence in respect of a small sum of Rs. 1-11-0 which is

alleged to have been paid by the 1st respondent's brother to the caretaker of the Travellers' Bungalow at Tarikere and which sum is said to have been not included in the list of expenses. Again the version of the petitioner that he has no personal knowledge of the several averments cannot at all be said to be quite correct in the light of the verification made at the close of the petition in respect of the various averments. Again even in the list of particulars annexed to the petition, the petitioner has solemnly affirmed and stated that what is stated above is true to the best of his knowledge, belief and information. While dealing with the several issues relating to this case, I have referred to the effect of the non-examination of the petitioner. The non-examination of a party would be somewhat justifiable if the case was of a trivial nature. Even in the case of private litigants when the litigation is purely criminal, invariably the complainant would be examined and from the non-examination of the complainant an adverse inference will be easily drawn. Again, even in civil cases when the burden is mostly on the defendant, even then the plaintiff will naturally examine himself in support of his case when the other side will have ample opportunity of cross-examining him. If the petitioner had been examined in this case, surely much light would have been thrown on the several matters in controversy. While so many P.Ws. have been examined on the side of the petitioner, and when the petitioner has been meticulously careful even on small matters, practically nothing might have been lost if the petitioner also had been examined. Moreover this proceeding cannot be viewed as an ordinary or a civil or criminal case. The very fact that three members of at least the rank and status of District Judges constitute this Tribunal shows with what seriousness the concerned authorities are viewing the election case. Further, it is from the State Assembly that ordinarily the popular ministry will be formed, and it cannot at all be denied that the members of the Assembly will have to play vital part in shaping the destiny of the State, and the petitioner aspired to become member of this Assembly and as he was defeated, he has filed this election petition challenging the regularity and validity of the election proceedings. No doubt in view of the averments made against the 1st respondent and in the light of the evidence adduced on the side of the petitioner, the Respondent had to step into the witness box and examined himself, and I may also state that I am not quite impressed with his evidence and I shall advert to it at a later stage. Even if the petitioner was not personally aware of many averments made in the petition, at least he would have thrown much light on the several matters if he had been examined. P.W. 84 Sri C. Channabasappa has spoken about some alleged disturbance and again P.W. 42 Sri C. Thimma Bovi has practically spoken about the pamphlet Ext-KKK and it cannot at all be said that the evidence of these P.Ws. was quite material though it may not have been quite unnecessary. Without relying on any technical provision of

law, the petitioner could have stepped into the witness box even before he closed his case, and shown to the Tribunal that he is a for more straightforward person than the 1st respondent and also convinced that his conduct and dealings are quite above reproach, and the petitioner by non-examination has denied this opportunity to himself as well as to the Tribunal. I cannot say whether the petitioner has chosen to do so on his own initiative or on the advice of others. If he has done at the instance of others, with much regret and reluctance I have to state that he was not properly advised. I have to deal with this aspect of the matter at considerable length in view of the importance of these proceedings to the public as well as to the Nation at large, and I feel, I shall be failing in my duty if I do not at least make these observations.

35. From the non-examination of the petitioner, the position is reduced to this. The 1st respondent is like a person who has struggled to cross the river with his men – the witnesses, and he may have with great difficulty waded through the stream. But the petitioner is like a person who has been merely sitting at the bank and carefully watching the stream, allowing his men- -his witnesses to pass through the river with difficulty or otherwise and the petitioner has not at least chosen to take a plunge into the river if not try to swim or cross the river. Hence as between the two, it will be safer and better to prefer the 1st respondent to the petitioner.

36. To sum up, the first question whether the entire election itself is void has been negatived for the reasons already referred to. As regards the second question, whether the election of the returned candidate, 1st respondent, is void and which is the principal question in the case, the petitioner has adduced considerable evidence regarding the alleged material irregularities and the several corrupt practices, and the evidence regarding these matters has been adverted to. The third question whether the petitioner is entitled to be returned as duly elected candidate in preference to the 1st respondent will arise only when the second question is decided in favour of the petitioner. It is contended by the learned counsel for the petitioner that the election law is very strict and that even a single instance of false personation or any one instance of corrupt practice will vitiate the election of the returned candidate. It is needless to state that sterner is the law, stricter will be the proof. But, however stringent and rigid the provisions of election law or any other kind of law may be, it has to be remembered that law is made for men and not men for law. Further, so long as law serves the needs of society, it will be respected and even adored, and the moment its utility is exhausted, it will be safely consigned in the store-house of knowledge. What has to be emphasised is that human aspect underlying any provisions of law cannot be ignored and much less foregotten. Moreover, how far a particular provision

of law is applicable to given set of facts more or less depends upon the nature and quality of the evidence. Indeed the bundle of facts and surrounding circumstances of any case practically serve as gates of reason through which the temple of justice has to be reached, and however exacting the zealous mistress of law may be, even she has to bow before this sacred temple which is an embodiment of truth and mercy, and before whose shining image the towering man is but a mirage.

37. Judged by the above test, in my view, the bundle of facts and the surrounding circumstances disclosed in this case are not at all sufficient to vitiate the election of the first respondent inasmuch as the alleged material irregularities and the corrupt practices are not conclusively established beyond any reasonable doubt. Hence the petition has to be rejected. However, my learned colleague the Chairman and the other learned Member, Sri Iqbal Hussain, do not see eye to eye with me and they are for allowing the petition and thus I have been in an unfortunate position of being a dissenting member, though at the same time I have the highest personal regard for both my colleagues. Some doubts are entertained about the dissenting Member writing a separate decision inasmuch as Section 104 of the Representation of the People Act is silent on that matter. Section 104 of the Representation of the People Act contemplates difference of opinion among the Members of the Tribunal and no doubt according to that section, the view of the majority may be the order of the Tribunal. But, the question for consideration is whether the dissenting Member is entitled to put his views in writing and pronounce the same. According to Section 90 of the said Act, every election petition shall be tried by the Tribunal as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure and hence, Order 41, rule 34 of the Code of Civil Procedure which relates to the dissenting judgment may be equally applicable to the proceedings before this Tribunal. And thus the writing of a dissenting judgment is impliedly authorised under this Act. However, some suggestion is made that there is no dissenting judgment in the Judicial Committee of the Privy Council and the same procedure may be adopted in the proceedings of this Tribunal. But, it is not known what rule of practice is followed in connection with the proceedings before the Judicial Committee of the Privy Council. In fact as seen from the several Reports there will be only one judgment of Privy Council. On the other hand, as borne out from the several Indian Law Reports, even in the Supreme Court and in several High Courts even where all Judges agree, each Judge has written separate judgments embodying his views. And in cases where some Judges differ, invariably there will be a dissenting judgment. In the circumstances, in my view, the writing of dissenting decision is authorised under the Act. Otherwise, the position of a dissenting Member of a Tribunal will be in no way better than an Assessor or a dissenting member of a Jury, which circumstance is not at all

contemplated, particularly when all the three Members of the Tribunal will be of at least the rank and status of District Judges and also when the proceedings of the Tribunal are final and conclusive. Otherwise, hardly any person with self-respect will agree to serve on the Tribunal when he cannot express his views in writing. Moreover, many Tribunals of this type are functioning throughout our country and, if a dissenting Member of a particular Tribunal puts his views in writing and if this also forms part of a record the public or any other persons interested in the matter might obtain certified copies of the views of the dissenting Member and utilise the same in connection with similar proceedings before other Tribunals of the country. And it is possible that even the majority of the Members of the other Tribunals may approve of the reasoning and principles enunciated by the dissenting Member of a particular Tribunal. Thus, in all humility, I may state that eventually the public at large will be benefitted besides adding to the wealth of legal knowledge. In the circumstances, I am convinced that a dissenting Member of the Tribunal can embody his views in writing and pronounce his decision.

38. For the reasons already stated, the petition is liable to be rejected. No doubt, I have not adverted to the evidence of the P.Ws. and throughout I have proceeded on the footing that the alleged corrupt charges are more in the nature of criminal charges and it is for the Prosecution to establish the guilt of the accused beyond any reasonable doubt. As the evidence of P.Ws. themselves is not quite clear and convincing besides being bristled with improbabilities and as the petition has to be dismissed more on this ground, it is therefore unnecessary to advert to the evidence of the P.Ws. at any length. As regards costs, though the 1st respondent has been examined in the case, seeing his testimony as a whole, his version is bristled with intrinsic improbabilities and his capacity and veracity do not appear to be appreciable if not quite below the average. Moreover, his return of expenses is shrouded in suspicion. Further, in my view, the petition has to be dismissed more on account of the evidence adduced by the petitioner being not satisfactory. In the circumstances, it would be appropriate to disallow the costs of the contesting 1st respondent. So far as the 3rd respondent is concerned, except filing his objection statement, he has practically done nothing in the case, and he seems to be more or less supporting the case of the first respondent, and in the circumstances, he will bear his own costs. Further, the 1st respondent has filed recriminatory petition making many allegations of illegal and corrupt practices against the petitioner but subsequently he has not pressed the same. No doubt, nobody can take any objection for the 1st respondent filing his recriminatory petition but when he has chosen to do so, he must substantiate the serious averments he has made, but the only redeeming feature is that he has not pressed his petition at an early stage. However, the 1st respondent has to pay costs of the recriminatory petitioner to the petitioner.

39. In the result, the main petition is dismissed and for the reasons already stated, I direct each party to bear his own costs of the main petition. The recriminatory petition filed by the 1st respondent is also dismissed and having regard to all aspects of the case, I direct the 1st respondent to pay the costs of Rs. 350 to the petitioner, and the 1st respondent has deposited a sum of Rs. 1,000 along with the recriminatory petition and this sum of Rs. 350 may be paid to the petitioner out of that amount.

40. With great suffering and sacrifices on the part of the leaders and masses, the freedom of our country has been achieved. After the attainment of independence this is the first general election held throughout the country under the New Constitution. This is one of the many Tribunals that have been constituted for trying election petitions. Indeed, it is a great pleasure and privilege for me to participate in the proceedings of this Tribunal and I express my deep gratitude to the Election Commission and the other concerned authorities for having given me this opportunity of serving on the Tribunal. Further, I express my hearty thanks to my learned brothers, the Chairman and the other Member Sri Mir Iqbal Hussain, for their kind co-operation and assistance which I value most. Lastly, I express my sincere thanks to Sri S. K. Venkataranga Iyengar and Sri H. Lingappa, learned counsels for petitioners and Sri K. Pattabhiraman, Sri K. Seetharama Sastry and Sri M. Govinda Rao, learned counsels for respondents who have assisted the Tribunal with valuable information both in respect of intricate questions of law and fact, and who have otherwise co-operated with the Tribunal in all possible ways and made our task easy and pleasant

Dictated to the Stenographer, transcribed and then pronounced in open Court, this 15th day of January 1953.

C. V. CHANNAPPA,
Member,
Election Tribunal.
15-1-1953.

Printed by the Director of Printing, Stationery and Publications
at the Government Press, Bangalore